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Sup. Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 148

EDGAR S. ALBRECHT AND GERALDINE ALBRECHT, HIS WIFE, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 149

EDWARD J. LINNENBRINGER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 150

DENNIS B. PITMAN AND MAY DELL PITMAN, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 155

Q. W. S. S. REALTY AND INVESTMENT COMPANY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 7 AND JUNE 8, 1946.

CERTIORARI GRANTED OCTOBER 14, 1946.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 13,223

CIVIL.

UNITED STATES OF AMERICA, APPELLANT,

vs.

EDGAR S. ALBRECHT, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 12, 1945

No. 13,226

CIVIL.

UNITED STATES OF AMERICA, APPELLANT,

vs.

Q. W. S. S. REALTY AND INVESTMENT COMPANY A CORPORATION, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 21, 1945.

No. 13,227

CIVIL.

UNITED STATES OF AMERICA, APPELLANT,

vs.

EDWARD J. LINNENBRINGER, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 21, 1945.

No. 13,228

CIVIL.

UNITED STATES OF AMERICA, APPELLANT,

vs.

DENNIS B. PITMAN, ET. AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 21, 1945.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the March Term, 1946, of said Court, before the Honorable John B. Sanborn, the Honorable Seth Thomas and the Honorable Walter G. Riddick, Circuit Judges.

Attest:

E. E. KOCH,
Clerk of the United States
Circuit Court of Appeals
for the Eighth Circuit.

(Seal)

Be it Remembered that heretofore, to-wit: on the 12th day of December, A. D. 1945, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Eastern District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America was Appellant and Edgar S. Albrecht, et al., were Appellees, and thereafter on the 21st day of December, A. D. 1945, transcripts of records pursuant to appeals taken from the District Court of the United States for the Eastern District of Missouri, were filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in certain causes wherein the United States of America was Appellant and Q. W. S. S. Realty and Investment Company, a Corporation, was Appellee, the United States of America was Appellant and Edward J. Linnenbringer, et al., were Appellees, and the United States of America was Appellant and Dennis B. Pitman, et al., were Appellees, which said transcripts as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, are in the words and figures following, to-wit:

Notice Of Appeal.

(Filed Nov. 27, 1945.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,

Docket No. 820. vs. At Law.

59.11 Acres of land, more or less, situate in the County of St. Charles, State of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

Notice is hereby given that the United States of America, Plaintiff in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final Judgment entered in this cause on the 29th day of June, 1945.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 27th day of November, 1945.

[fol. 2] Docket entry showing filing of notice of appeal and mailing copy of such notice to attorneys of record for defendants.

(November 27, 1945.)

Notice of appeal of plaintiff to the United States Circuit Court of Appeals, 8th Circuit from final judgment entered herein June 29, 1945 filed and copies of aforesaid notice forthwith mailed by the Clerk of the Court to George Eigel, Esq., atty. of record for defts. Albert W. Albrecht, Jr., et al., and to Robert P. Elam, Esq., attorney of record for defts., Edward S. Albrecht, et al.

[fol. 3] (Clerk's Docket Entries of case No. 820.)

United States Of America, Plaintiff,
Docket No. 820. vs. At Law.
59.11 Acres of land, more or less, situate in the County Of St. Charles, State Of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

4- 9-41 Motion of plaintiff for leave to file petition in condemnation and for order for summons filed and presented and granted in order filed and entered; petition in condemnation filed and summons issued directed to defendants, returnable May 26, 1941; on oral motion of plaintiff, order and judgment filed and entered on Declaration of Taking filed April 7, 1941 in Cause No. 770, vesting fee simple title in plaintiff as to tract designated herein and directing delivery of immediate possession to plaintiff; order filed and entered directing notice be given to defendants of judgment on Declaration of Taking and of requirement for immediate delivery of possession to plaintiff; on oral motion of U. S. Attorney, order filed and entered directing transfer of $2,232.00 to this cause for the use and benefit of defendants entitled thereto from sum heretofore deposited by plaintiff in Registry under Declaration of Taking filed in said Cause No. 770, being estimated compensation for said Tract No. 245, herein.

5-26-41 Marshal's Return of service to summons and order filed. (Executed).

5-26-41 By agreement, defendants Edgar S. and Geraldine Albrecht granted to June 23, 1941 in which to plead.

5-26-41 Order filed and entered continuing cause to June 16, 1941.

5-26-41 On oral application defendants Albrecht W. Albrecht, Jr., and wife granted 20 days additional time within which to plead.

6-16-41 On oral motion of U. S. Attorney, order filed and entered continuing cause to June 30, 1941.

6-16-41 On oral motion, defendants A. W. and Virginia Albrecht granted 10 days additional time within which to plead to plaintiff's petition in condemcondemnation, filed.

6-23-41 By leave of Court and by agreement of counsel, defendants Edgar S. and Geraldine Albrecht granted to June 30, 1941 in which to plead.

6-30-41 Order filed and entered continuing cause to Sept. 15, 1941.

[fol. 4] 6-30-41 Upon oral application, defendants Albert W. Albrecht, Jr., and Virginia Albrecht granted 10 days additional time within which to plead.

7- 2-41 Answer of defendant Edgar S. Albrecht and Geraldine Albrecht to plaintiff's petition in condemnation, filed.

7-12-41 Upon oral application of U. S. Attorney, order filed and entered granting plaintiff 30 days from date in which to plead to answer filed by defendants Edgar S. Albrecht and Geraldine Albrecht.

9- 4-41 Answer of defendants Albert W. Albrecht, Jr. and Virginia Albrecht to plaintiff's petition filed by leave.

9-15-41 On oral motion of plaintiff, order filed and entered granting plaintiff leave to amend petition in certain respects; order filed and entered continuing cause to October 14, 1941.

10-14-41 On oral motion of U. S. Attorney, order filed and entered continuing cause to Nov. 3, 1941.

11- 3-41 On oral motion of U. S. Attorney, order filed and entered continuing cause to Jan. 14, 1942.

1-14-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to April 30, 1942.

4-30-42 Upon oral motion of U. S. Attorney, order filed and entered continuing cause to June 3, 1942.

6- 3-42 Upon oral motion of U. S. Attorney order filed and entered continuing cause to July 15, 1942.

7-15-42 Order of Hon. Charles B. Davis continuing cause upon oral motion of the U. S. Attorney to September 8, 1942, received, filed and entered.

9- 8-42 On oral motion of U. S. Attorney, order filed and entered continuing case to December 8, 1942.

12- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to January 13, 1943.

1-13-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to April 13, 1943.

4-13-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to Oct. 13, 1943.

10-13-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to March 7, 1944.

3- 7-44 On oral motion of U. S. Attorney, order filed continuing cause to June 6, 1944.

6- 6-44 On oral motion of U. S. Attorney, order filed continuing cause to Dec. 4, 1944.

[fol. 5] 12- 4-44 On oral motion of U. S. Attorney, order filed continuing cause to March 5, 1945.

3- 5-45 On oral motion of U. S. Attorney, order filed continuing cause to May 7, 1945.

3-30-45 Motion of plaintiff for judgment in condemnation and judgment for defendants fixing compensation by optlon filed.

3-31-45 Claims of plaintiff in its own behalf and for Collector of Internal Revenue for the Sixth Collection District of Missouri, asserted against any disbursement herein from Registry awarded to R. Newton McDowell, by reason of certain liens, interest and penalties thereon, filed.

4- 2-45 On oral motion of U. S. Attorney, order filed and entered setting for hearing on May 7, 1945, the motion of plaintiff heretofore filed for judgment in condemnation and for judgment for defendants fixing compensation by option; directing plaintiff give notice by mail of such hearing

to defendants, their attorneys and R. Newton McDowell and The Kansas City Title Insurance Company, and by posting notice thereof, etc.

4- 4-45 Affidavit as to mailing of notice to defendants and other parties in interest of date of hearing of plaintiff's motion for judgment in condemnation and for judgment for defendants fixing compensation by option filed by plaintiff.

4-16-45 Clerk's Return to posted notice filed.

5- 2-45 Answer of defendants Edgar S. Albrecht, et al. to plaintiff's motion for judgment in condemnation and fixing compensation by option without interest, and motion of said defendants for judgment with interest, filed.

5- 5-45 Claim of intervening defendant Kansas City Title Insurance Company filed.

5- 7-45 Motion of plaintiff for judgment for plaintiff in condemnation and for defendants fixing compensation by option and on responsive pleadings thereto, and counter-motions of defendants for payment of interest, taken as submitted.

5-17-45 Plaintiff tenders into Court to the use and benefit of persons entitled thereto, deficiency in the sum of $19,193.00, which sum is deposited by the Clerk in the Registry.

6- 7-45 Supplemental claim of U. S. asserted against any payment herein to R. Newton McDowell, filed.

6-22-45 Memorandum opinion of the Court filed finding issues in favor of defendants and against plaintiff; directing appropriate judgment be submitted in this case respecting the payment of interest, and directing counsel to submit orders ruling on various motions and counter-motions; all in accordance with said opinion, for approval, signature and entry.

[fol. 6] 6-29-45 Findings and judgment filed and entered awarding plaintiff judgment in condemna-

tion as well as judgment for defendants fixing compensation by option, with interest, etc.

7- 7-45 Motion of plaintiff for new trial, filed.

8- 9-45 Amended claim of the United States of America, filed.

8-14-45 Motion of Reconstruction Finance Corporation to intervene, together with proposed intervening petition of said Reconstruction Finance Corporation, filed.

8-15-45 Motion docketed for hearing on August 15, 1945 passed to next regular motion day to be designated.

8-23-45 Order of Hon. R. M. Duncan fixing September 8 as time for filing intervening petitions and fixing September 11, 1945 as time for hearings thereof, received, filed and entered.

8-27-45 Affidavit of U. S. Attorney as to mailing a copy of notice to file intervening petitions respecting claim to money on deposit in the Registry of the Court, filed.

8-28-45 Petition of defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht for distribution of amount on deposit in the Registry of the Court, filed.

9- 4-45 Claim of R. Newton McDowell filed.

9- 7-45 Clerk's return to posted notice filed.

9- 7-45 Motion of National Refining Co., to intervene, with proposed intervening petition attached, together with affidavit as to service of aforesaid motion to intervene, filed.

9-11-45 Intervening petition of R. Newton McDowell heard, submitted and allowed in the sum of 5% of option price. Intervening petition of Kansas City Title Insurance Company continued to October 5, 1945 at ten A. M. Cause submitted for entry of order of distribution to record owners subject to claim of Kansas City Title Insurance Company.

9-12-45 On oral motion of U. S. Attorney, motion of plaintiff for a new trial passed until further order.

9-14-45 Separate motions of National Refining Company and Reconstruction Finance Corporation to intervene sustained and separate intervening petitions of aforesaid parties thereupon filed. Winston H. Woodson, Esq., attorney for Globe Indemnity Company, and United States of America for and on behalf of Internal Revenue Collector of Sixth Collection District of Missouri granted ten days from this date within which to file intervening petition, herein.

[fol. 7] 9-27-45 Stipulation filed between defendant landowners Edgar S. Albrecht, et al., and Kansas City Title Insurance Company providing that sum of $321.38 be paid to said title company from funds on deposit in Registry, and upon such payment the claim of Kansas City Title Insurance Company to be dismissed with prejudice and said Company to immediately repay to the Treasurer of the U. S. title expenses in the sum of $36.00.

10- 5-45 Claim of Kansas City Title Insurance Company allowed at 1½% of option price pursuant to stipulation heretofore filed. Cause submitted for order of distribution to record owners.

10-16-45 Order of partial distribution filed and entered.

11-26-45 Motion of pltff. for a new trial submitted by pltff., taken as submitted by defts. and overruled.

11-27-45 Notice of appeal of pltff. to the USCCA, 8th Circuit from final judgment entered herein June 29, 1945 filed and copies of aforesaid notice forthwith mailed by the Clerk of the Court to George Eigel, Esq., atty. of record for defts. Albert W. Albrecht, Jr., et al., and to Robert P. Elam, Esq., attorney of record for defts. Edward S. Albrecht, et al.

12- 7-45 Appellant's designation of record and (2) statement of points to be relied upon on appeal, filed.

[fol. 8] (Motion of United States of America for Leave to File Petition in Condemnation and for Order for Summons.)

(Filed April 9, 1941.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 820. vs. At Law.
59.11 Acres of land, more or less, situate in the County of St. Charles, State of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

Tract No. 245.

Comes Now the United States of America by Harry C. Blanton, United States Attorney for the Eastern District of Missouri, and moves the Court for permission to file the above-entitled proceeding to condemn certain real estate as in said petition described and asks that this Court enter an order permitting the filing of said petition and directing summons to issue to the defendants named therein.

Respectfully submitted,

HARRY C. BLANTON,
United States Attorney.

(Order Granting Leave to File Petition in Condemnation and for Issuance of Summons, etc.)

Motion for leave to file the petition for condemnation in the above-entitled proceeding is granted and the petition ordered filed;

And It Is Hereby Further Ordered And Directed that the Clerk of this Court shall issue summons and notice to the defendants and each of them as named in the petition for condemnation filed in the above-entitled cause to appear before the Judge of this Court at the United States Court House in the City of St. Louis, State of Missouri, on the

26th day of May, 1941 at 10:00 in the forenoon, then and there to answer the petition of the United States of America and at which time and place said petition will be heard;

And It Is Hereby Further Ordered And Directed that inasmuch as this is a proceeding for the condemnation of property under the power of eminent domain, the procedure for the service of said summons and notice is not governed by Rule No. 4 of the New Rules of Civil Procedure for the District Courts of the United States; that said rule is not applicable to the service of such summons and notice; and that in the service of summons and notice herein, plaintiff is authorized to follow its former practice.

GEO. H. MOORE,
United States District Judge.

Dated this 9th day of April, 1941.

[fol. 9] Petition In Condemnation.

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 820. vs. At Law.
Tract No. 245.

59.11 Acres Of Land, More Or Less, Situate In The County Of St. Charles, State Of Missouri, Known as Tract No. 245, and

Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., Virginia Albrecht, Collector Of Revenue Of St. Charles County, Missouri, County Of St. Charles, State Of Missouri, Defendants.

[fol. 10] To The Honorable, The Judges Of The United States District Court For The Eastern District Of Missouri:

Now Comes, the plaintiff herein, the United States of America, a sovereign, by its attorneys, Harry C. Blanton, United States Attorney for the Eastern Judicial District of Missouri, and Special Assistant to the United States Attorney, and, leave of Court having been first obtained, files this, its petition herein, at the direction and under the au-

thority of the Attorney General of the United States pursuant to the request of the Secretary of War of the United States, and represents unto the Court as follows:

First: That the defendants herein named are the owners of or claim or may claim an interest or interests in and to the real estate in this petition described, which the plaintiff seeks to condemn in and by this proceeding for the public uses hereinafter more particularly set out;

Second: That the said real estate hereinafter described is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Southeastern Division of the Eastern Judicial District of Missouri;

Third: That the plaintiff, the United States of America, is authorized and empowered to acquire the lands herein described by purchase, condemnation, or otherwise, and that the United States Attorney is acting under instructions from the Attorney General of the United States and at the request of the Secretary of War of the United States;

Fourth: That this is an action having for its purpose, among other things, the acquiring by condemnation and in fee simple absolute of the land hereinafter described and the title thereto, which real estate is located as aforesaid, and is authorized and directed to be brought by the [fol. 11] Secretary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257); and the Act of Congress approved July 2, 1917, USC 50:171, as amended, which authorizes the acquisition by the Secretary of War of land suitable and necessary for military purposes, and the Act of Congress approved June 26, 1940 (Public No. 667—76th Congress); and the Act of Congress approved September 24, 1940 (Publ. Res. 99—76th Congress); which Acts appropriated funds for such purposes;

Fifth: That the project herein referred to and the matters to be performed, being an acquisition of land for military purposes for an ordnance plant and the national defense of the United States, are within the purview of the sovereign plaintiff and of the Congress of the United States

and the said lands and territory to be acquired are located within the jurisdiction of this Court;

Sixth: That it is the opinion of the Secretary of War that it is necessary and advantageous to the interests of this sovereign plaintiff that the said land be acquired by condemnation under judicial process, and that the acquisition in fee simple of said lands be had forthwith; that the money has been appropriated and is available to pay for said lands;

Seventh: That the land to be condemned and the nature and extent of the interests therein of the various persons and claimants thereto as to each respective parcel is described as follows:

[fol. 12] Tract No. 245.

(A)

Tract No. 245, containing 59.11 acres of land, more or less, situated in St. Charles County, Missouri, and more particularly described as follows:

A tract of land located within Sections 34 and 35, Township 46 North, Range 3 East, described as follows: Beginning at an old stone at the southwest corner of the SE¼ of Section 34; thence North 12.254 chains to an iron pipe; thence East 32.544 chains to a point in the center of a County Road; thence along said County Road North 1 degree 45 minutes East 1.28 chains to an iron pipe; thence North 75 degrees 55 minutes East 12.47 chains to the center right of way line of Missouri U. S. Highway 40 TR; thence along center line of said right of way, South 17 degrees 28 minutes East 975 feet, more or less, to center line of right of way of the M. K. & T. Railroad Company; thence along the center line of said railroad right of way South 74 degrees 58 minutes West 13.12 chains more or less, to an iron pipe in the center of a county road; thence along the section line between Sections 3 and 34 West 34.39 chains to the place of beginning, situated in St. Charles County, Missouri, and containing 59.11 acres more or less, subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

subject also to right of way easement of M. K. & T. Railroad Company.

[fol. 13] (B)

That the following defendants own or may own or may claim to have some right, title, interest, lien or estate in, to or upon said land:

Edgar S. Albrecht

Geraldine Albrecht

Albert W. Albrecht, Jr.

Virginia Albrecht

[fol. 14] Eighth: That all of the land described in this petition is subject to liens or claims for certain taxes, and the County of St. Charles, State of Missouri, and the Collector of Revenue of St. Charles County, Missouri, are, therefore, named parties defendant herein;

Ninth: That within the boundaries of the above described tract of land are located certain roads and highways; that the defendants hereinbefore named as owners of the fee and as claiming an interest in said lands, each claim and assert, or may claim and assert a reversionary interest in and to the premises respectively so occupied as roads and highways, and which reversionary interests the plaintiff herein seeks to include and condemn in this proceeding;

Tenth: That all and singular, the heirs, husbands, wives, devisees, executors, administrators, representatives, alienees, successors and assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lienors and claimants, having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees, users, holders and owners of and claimants to easements in, on, over, across or through said lands; and all persons, firms and corporations having or claiming any title to or interest in any of said land or any part thereof, herein sought to be condemned, are made parties defendants, as hereinabove specifically named, if known, and if unknown, such unknown persons

by the description of the "Unknown Owners" of the land herein described and to be condemned, to the end that they may come into Court and by proper pleadings make known their interests and claims to said land or to the proceeds arising therefrom;

Eleventh: That your petitioner has attempted to set forth the interest or estates of all persons, firms, and corporations in the lands herein mentioned as far as your petitioner has been able to ascertain the same; but, notwithstanding such statement, all persons, firms or corporations, including all unknown officers, trustees, directors and shareholders of any defunct corporation having or claiming any interest or estate in or to said land, are made parties to this proceeding generally, to the end that all of their [fol. 15] rights, title, interests and estate, whatever it may be, to all and singular, the premises above mentioned may be reached and divested out of them and vested in your petitioner, the United States of America;

Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and will make and have entered all such orders, judgments and decrees as may be necessary to bring all the known owners of said land before this Court, and to make all unknown parties having any interest therein defendants hereto, and to that end that process, summons and notice may issue for the defendants hereinbefore named, and for the order of the Court directing notice of suit, and for publication thereof to the unknown, not found and non-resident defendants herein, if any there be, all as required by law, giving them notice of the time when and the place where this petition will be heard, and for such other orders and decrees as may be proper and necessary; and that the Court will appoint three disinterested commissioners, qualified by law, to determine, assess, and award the value of the property proposed to be taken and other damages which may be sustained by the respective owners of or persons claiming an interest in and to the aforesaid property hereinbefore described and proposed to be taken; and that said commissioners will assess according to the provisions of the acts apropos to this proceeding and the provisions of the law applicable thereto, under which this

action is brought, the special and direct benefits arising from the improvements, if any, which may be sustained by, or may accrue to, said defendants; that the Court will decree to this plaintiff the right of judgment in condemnation herein in fee simple as contemplated by the laws of Congress in this case made applicable, and that these defendants and each of them, and all other claimants, be required to show cause on the day therein fixed why said plaintiff should not have the relief herein prayed for; that plaintiff may have judgment for condemnation of the property hereinbefore described, and that the defendants, and each of them shall be divested of all of their said right, title and interest in and to the aforesaid premises, and that the title thereto in fee simple shall be vested in this sovereign plaintiff, and that it shall have, own and control the same forever; that the Court, upon the filing of this petition, will make an order pursuant to [fol. 16] the Act of Congress approved February 26, 1931 (46 Stat. 1421), decreeing to the plaintiff the right to take immediate possession of said lands for the purposes hereinbefore described in order that the plaintiff, its servants, agents and employees may proceed with the aforesaid project and for the purposes hereinbefore required and to permit the said plaintiff to proceed with the work of construction of said ordnance plant as contemplated by the plans of said project; that the plaintiff may have judgment against the respective premises, property or interests therein for special benefits, if any, in excess of the values and damages in each instance assessed in the premises by the aforesaid commissioners; and that this Court will make such further necessary orders in the premises as shall be just, proper, necessary and requisite to vest said lands in fee simple absolute in the United States of America, and grant to this petitioner all such other and further relief in the premises to which this petitioner may be found entitled and as the Court may deem just and proper.

THE UNITED STATES OF AMERICA,
By Harry C. Blanton,
United States Attorney for the
Eastern District of Missouri,
402 New Federal Building,
St. Louis, Missouri.

M. WALKER COOPER,
Special Assistant to the
United States Attorney,
410 New Federal Building,
St. Louis, Missouri.

[fol. 17] United States of America,
Eastern District of Missouri—ss.:

Before me, the undersigned, personally appeared Harry C. Blanton, United States Attorney in and for the Eastern District of Missouri, and made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief; and that this proceeding is in good faith for the purposes specified in the petition.

HARRY C. BLANTON.

Subscribed and sworn to before me, this 9th day of April, 1941.

JAMES J. O'CONNOR,
Clerk of U. S. District Court in and
for the Eastern District of Missouri.
(Seal) By Clare Redmond, Deputy.

Endorsed, filed Apr. 9, 1941, Jas. J. O'Connor, Clerk.

[fol. 18] Declaration of Taking.

(Filed April 7, 1941.)

In the United States District Court, in and for the Eastern District of Missouri.

United States of America, Petitioner,
No. 770. vs.
1,710.54 Acres of Land, More or Less, Situate in St. Charles County, State of Missouri, and Vincent Lonergan, et al, Defendants.

To the Honorable,
The United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved July 2, 1917, as amended by the Act of Congress approved April 11, 1918 (50 U. S. C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act of Congress approved June 26, 1940 (Public No. 667—76th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the site of an ordnance munitions plant and for such other uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Weldon Springs Ordnance Plant, St. Charles County, Missouri, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

[fol. 19] 2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of the same lands described in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto, subject, however, to all existing rights for easements for public roads, pipe lines and public utilities, in, across and over the lands acquired.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 3rd day of April, A. D. 1941, in the City of Washington, District of Columbia.

HENRY L. STIMSON,
Secretary of War of the
United States.

[fol. 20] Schedule "A".

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregates 1,710.54 acres, more or less, situate and being in the County of St. Charles, State of Missouri. A Description of the lands taken, together with a list of the [purposted] owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

[fol. 21] Tract No. 245.

A tract of land located within Sections 34 and 35, Township 46 North, Range 3 East, described as follows: beginning at an old stone at the southwest corner of the SE¼ of Section 34; thence North 12.254 chains to an iron pipe; thence East 32.544 chains to a point in the center of a County Road; thence along said County Road North 1 degree 45 minutes East 1.28 chains to an iron pipe; thence North 75 degrees 55 minutes East 12.47 chains to the center right of way line of Missouri U. S. Highway 40 T[illegible]; thence along center line of said right of way, South 17 degrees 28 minutes East 975 feet, more or less, to center line of right of way of the M. K. & T. Railroad Company; thence along the center line of said railroad right of way South 74 degrees 58 minutes West 13.12 chains more or less, to an iron pipe in the center of a county road; thence along the section line between Sections 3 and 34 West 35.39 chains to the place of beginning, situated in St. Charles County, Missouri, and containing 59.11 acres, more or less.

Names of Purported Owners: Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht.

Estimated Compensation $2,232.00.

[fol. 22] The gross sum estimated to be just compensation for the lands hereby taken is $76,889.26.

[fol. 23] Order And Judgment On Declaration Of Taking.

(Filed April 9, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 820. vs. At Law.
Tract No. 245.
59.11 Acres Of Land, More Or Less, Situate In The County Of St. Charles, State Of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter a judgment herein on the Declaration of Taking filed in Case No. 770 on April 7, 1941, and upon consideration of said motion, and the condemnation petition filed herein, and the Declaration of Taking filed in said Cause No. 770, the Court having heard arguments of counsel and being fully advised in the premises, finds:

First: That a petition in condemnation was duly filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the land described in said petition, and also under authority of the Attorney General of the United States:

Second: That said Petition filed herein and the Declaration of Taking heretofore filed in Cause No. 770 state the authority under which, and the public use for which, said land was taken; that said Declaration of Taking was signed by the Secretary of War of the United States, who was, and is, duly authorized and empowered by law to acquire the land described in said petition for, on behalf of and in the name of the United States of America, for the purposes therein set forth;

[fol. 24] Third: That a proper description of the land taken, sufficient for identification thereof, is set out in the said Declaration of Taking;

Fourth: That the said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use:

Fifth: That a map or plan showing the land taken is annexed to and made a part of the said Declaration of Taking;

Sixth: That a statement is contained in the said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for Tract No. 245, in the amount of Two Thousand Two Hundred Thirty Two Dollars And No. Cents ($2,232.00), and that said sum was deposited in the Registry of this Court in Case No. 770 to the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking:

Seventh: That a statement is contained in the said Declaration of Taking that the amount of the ultimate award of compensation for Tract No. 245, for the taking of said property, in the opinion of the Secretary of War of the United States, probably will be within any limits prescribed by Congress on the prices to be paid therefor,

It Is Therefore Ordered And Adjudged that the title to said land in fee simple absolute, vested in the United States of America upon the filing of the said Declaration of Taking and depositing in the Registry of this Court of the aforesaid estimated compensation, which land is situated in St. Charles County, Missouri, and described as follows:

[fol. 24a] Tract No. 245, containing 59.11 acres of land, more or less, situated in St. Charles County, Missouri, and more particularly described as follows:

A tract of land located within Sections 34 and 35, Township 46 North, Range 3 East, described as follows: Beginning at an old stone at the southwest corner of the SE¼ of Section 4; thence North 12.254 chains to an iron pipe; thence East 32.544 chains to a point in the center of a County Road; thence along said County Road North 1 degree 45 minutes East 1.28 chains to an iron pipe; thence North 75 degrees 55 minutes East 12.47 chains to the center right of way line of Missouri U. S. Highway 40 TR; thence along center line of said right of way, South 17 degrees 28 minutes East 975

feet, more or less, to center line of right of way of the M. K. & T. Railroad Company; thence along the center line of said railroad right of way South 74 degrees 58 minutes West 13.12 chains more or ..s, to an iron pipe in the center of a county road; thence along the section line between Sections 3 and 34 West 35.39 chains to the place of beginning, situated in St. Charles County, Missouri, and containing 59.11 acres more or less, subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 25] that said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding, shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law, and

It Is Further Ordered And Adjudged that the possession of said lands shall be immediately surrendered to the United States of America.

This cause is held open for the en .y of such other and further orders and judgments as may be just and equitable in the premises.

Entered on this 9th day of April, 1941.

GEO. H. MOORE,
United States District Judge.

[fol. 26] Order Transferring Fund From The Declaration Of Taking In Case No. 770.

(Filed April 9, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 820. vs. At Law.
Tract No. 245.
59.11 Acres Of Land, More Or Less Situate In The County Of St. Charles, State Of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

It appearing to the Court that in the Declaration of Taking filed with Case No. 770 on April 7th, 1941, there was

paid into the Registry of the Court as estimated compensation for Tract No. 245, described in the petition filed herein, the amount of $2,232.00;

On oral motion of the United States Attorney, the Clerk of this Court is directed to transfer $2,232.00, of the whole amount deposited under the Declaration of Taking heretofore filed, to this cause for the use and benefit of the defendants entitled thereto as to Tract No. 245.

GEO. H. MOORE,
United States District Judge.

Dated, this 9th day of April, 1941.

[fol. 27] Separate Answer Of Edgar S. Albrecht And Geraldine Albrecht.

(Filed July 2, 1941.)

Now come Edgar S. Albrecht and Geraldine Albrecht, his wife, and for their answer to plaintiff's petition in condemnation deny that they were, at the time of the institution of this action or at any time since, the owners of the fee simple title to lands referred to in plaintiff's petition or that they claimed any title or interest therein, and deny that they were at said time, or at any time since, in possession of said land, of any of it, and assert that they had, long prior to the institution of this action, surrendered possession of said lands to plaintiff, pursuant to a valid contract between plaintiff and these defendants, as will appear more fully hereinafter.

Further answering, these defendants state:

That on and prior to the 9th day of December, 1940 they were, together with Albert W. Albrecht, Jr. and Virginia Albrecht, the owners of the fee simple title to 59.11 acres of land, more or less, situated in the County of St. Charles, State of Missouri, more particularly described in plaintiff's petition as Tract No. 245, which said descriptions are, by reference incorporated herein and made a part hereof as fully as if here set out in haec verba.

That one R. Newton McDowell solicited these defendants and Albert W. Albrecht, Jr. and Virginia Albrecht to sub-

[fol. 28] mit an offer for the sale of their said land to plaintiff and supplied to said defendants an instrument entitled "Option to Purchase Land." That on the 9th day of December, 1940, these defendants and Albert W. Albrecht, Jr. and Virginia Albrecht duly executed said instrument, in and by which they offered to sell to plaintiff the aforedescribed real estate for the sum of $21,425.00, returned the same to McDowell, who, in turn, delivered it to plaintiff. Thereafter, on the 17th day of December, 1940, the offer so made by defendants was duly accepted by and on behalf of the United States of America by C. J. Harrold, Major, Quartermaster Corps, United States Army, duly authorized to act for plaintiff in that connection.

That the contract created by said offer and acceptance is attached hereto as Exhibit "A" and is by reference incorporated herein as fully as if here copied in words and figures. That by said contract it was agreed between defendants and plaintiff that defendants, their heirs, executors and assigns would sell and convey to the Government, for a consideration of $21,425.00, the above mentioned real estate; that plaintiff was to have the right to the immediate occupancy and use of the land for any purpose whatsoever, and defendants agreed to execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, and to furnish, without cost to the Government, a certificate of title of the Kansas City Title Insurance Company to said land satisfactory to the Attorney-General of the United States, and, upon approval of said title, defendants agreed to have a deed to said land recorded and to have said Title Company furnish its certificate showing title to be good and marketable as vested in the United States of America, free of all encumbrances. Upon the furnishing of the final certificate of title, plaintiff bound itself to pay the aforesaid purchase price to defendants.

[fol. 29] That defendants did fully carry out and perform all of the obligations placed upon them by said contract and did, by good and valid general warranty deed dated February 6, 1941, and executed by Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr. and Virginia Albrecht, convey said lands to plaintiff, which deed was delivered to

the Kansas City Title Company, authorized to act for the plaintiff in that connection, and which Company had made all the necessary examinations of title without cost to plaintiff and supplied all of the required certificates of title, including a final certificate showing title in the United States Government, and that said contract has been fully executed and performed in each and every particular save and except that although plaintiff duly executed its check payable to these defendants and delivered the same to said Title Company for transmission to defendants, before the same was delivered plaintiff ordered the check withheld and later took possession thereof and, so far as defendants are informed, still retains the same. Defendants have not been paid the agreed purchase price, or any part thereof.

Defendants further state that they have, in reliance upon said contract, carried out the same as aforesaid and that plaintiff, prior to the institution of this action, went into possession of the aforedescribed land and ever since has been, and is now, holding possession and making use of said property, and that plaintiff is estopped from abrogating or disclaiming its obligation under said contract.

That the above mentioned contract between plaintiff and these defendants further provides that if, for any reason, the title to the land is not approved by the Attorney-General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with the terms and provisions of this option, and will, upon filing its petition in such proceedings, [fol. 30] deposit said agreed purchase price with the Clerk of said Court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings. Defendants have conveyed good and marketable fee simple title to all of said lands to the United States of America but defendants state that they have no information as to the final action of the Attorney-General of the United States on this subject, except that the filing of this action in condemnation and the allegation that these defendants own or may claim to own title to said property and that said land is subject to liens or claims for certain taxes and that other

persons, named and unknown, are made parties herein so that all of the rights, title, interest and estate may be divested out of such persons and vested in the United States of America, tend to indicate that the Attorney-General of the United States has not finally approved the title and that this action has been instituted by the United States of America pursuant to the aforesaid provision of the contract.

Defendants assert that if the Attorney-General has finally approved said title, then and in that event, plaintiff being at the time of the institution of this action the owner of the full and complete fee simple title to the property in question and being at said time in possession thereof, there would be nothing to condemn by this action, this would be a moot cause, and this Court would have no jurisdiction to proceed herein.

That defendants, in reliance upon the aforesaid contract, have conveyed their property to plaintiff and have surrendered possession thereof to plaintiff and that plaintiff has, for a long time past, been in full possession of said property and has been, and is now, using the same for its own purposes and benefit, and plaintiff is estopped to proceed in this action contrary to its duties and obligations under said contract and is bound to carry on this proceeding [fol. 31] in conformity with the provisions thereof, which are expressly applicable hereto.

Wherefore, it is prayed that the Court enter its verdict, judgment and decree, fixing the award for the land described in plaintiff's petition at $21,425.00 and requiring the plaintiff to deposit said agreed purchase price with the Clerk of this Court, the same to be disbursed by said officer pursuant to the decree entered in these proceedings.

IGOE, CARROLL, KEEFE
& McAFEE
J. W. McAFEE
Attorneys for Defendants,
1530 Boatmen's Bank Building,
St. Louis, Missouri.

[fol. 32] Separate Answer Of Albert W. Albrecht, Jr. And Virginia Albrecht.

(Filed Sept. 4, 1941.)

Come now Albert W. Albrecht, Jr., and Virginia Albrecht, his wife, two of the defendants in the above entitled cause, and for their answer to plaintiff's petition filed herein state:

First: These defendants deny that they are the owners of the property in fee simple described in the plaintiff's petition as Tract No. 245, and further deny that they have any interest in said property at this time and have not had any interest therein since December 17, 1940.

Second: These defendants further deny each and every allegation in said petition contained.

Third: These defendants further state that on or about the 9th day of December, 1940, one R. Newton McDowell, a duly authorized agent of the plaintiff, acting within the scope of his authority came to these defendants and on behalf of the plaintiff solicited these defendants for an option to purchase the property described in plaintiff's petition, which said option was given by these defendants. The option of purchase was accepted by C. J. Harrold, Major, Quarter Master Corps, United States Army, acting within the scope of his authority for the benefit of the plaintiff on December 17, 1940. A copy of said option contract is hereto attached, marked Exhibit A, and made a part of this answer.

[fol. 33] Fourth: These defendants further state that pursuant to said contract they were to execute and deliver a warranty deed conveying fee simple title to the plaintiff and to furnish without cost to the plaintiff a certificate of the Kansas City Title Insurance Company, satisfactory to the Attorney General, showing title to be vested in the plaintiff; that said deed was delivered to the Kansas City Title as a duly authorized agent of the plaintiff and as directed by the plaintiff as set forth in the agreement, and that these defendants have caused to be prepared by the Kansas City Title Insurance Company and are willing to furnish to the plaintiff said certificate of title without any cost to the plaintiff showing title to be in the plaintiff.

Fifth: That a check was delivered by the plaintiff to the Kansas City Title Insurance Company to be delivered to defendants in the sum of $21,425.00, but before the check was delivered to the defendants, plaintiff gave the Kansas City Title Insurance Company instructions not to deliver said check and defendants have not received payment of said amount as provided for in option contract.

Sixth: These defendants further state that pursuant to said option contract they surrendered possession of said property to the plaintiff and to the best of their knowledge plaintiff did occupy the premises and has continued to occupy said property until the present time. That by the conveyance and the surrender of the property on the part of the defendants and by the plaintiff's using the property as though it had title to said property, plaintiff is estopped to proceed in this action contrary to its duties and obligations under said option contract.

Seventh: These defendants further state that said title was to be approved by the Attorney General and these defendants have no information as to whether the Attorney General did approve the title, but the action of the Attorney General in bringing this condemnation suit and alleging the interest of the defendants and other parties indicates that the title was not approved, and that this suit has been filed pursuant to a provision in the option contract that if for [fol. 34] any reason the Attorney General did not approve the title the Government will proceed to acquire the land by a condemnation proceeding under a consent verdict fixing the award at the agreed valuation and in accordance with the terms and provisions of the option contract and that the Government will upon filing its petition deposit the agreed price with the clerk to be disbursed pursuant to the decree in such proceeding.

Eighth: Defendants further state that if the Attorney General has approved the title, the title to the property involved is in the plaintiff, and there is nothing for the plaintiff to condemn in this action, and the case would be a moot case and the Court is without jurisdiction in the premises.

Wherefore, having fully answered, these defendants pray that the Court enter its verdict, judgment, and decree fixing the award at $21,425.00, and require the plaintiff to deposit

said amount with the clerk to be disbursed by him in accordance with the decree entered.

GEORGE EIGEL, 208 N. Broadway,
Attorney for Defendants, Albert W. Albrecht, Jr., and Virginia Al- Albrecht.

[fol. 35] Defendants' Exhibit A.

Option to Purchase Land.

Know All Men By These Presents: That the undersigned, Edgar S. Albrecht and Geraldine Albrecht, his wife, and Albert W. Albrecht, Jr. and Virginia Albrecht, his wife for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is hereby acknowledged, hereby agrees for their heirs, executors and assigns, to sell and convey to the Government for the consideration of Twenty-one thousand Four Hundred Twenty-five Dollars ($21,425.00) that certain piece or parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

A tract of land located within Sections 34 and 35, Township 46 North, Range 3 East, described as follows: Beginning at an old stone at the Southwest corner of the Southeast quarter of Section 34, from which a hickory tree 11 inches in diameter bears S. 11° 05′ E., 0.356 chains; thence North 12.254 chains to an iron pipe from which a White Oak 10 inches in diameter bears S. 34° 15′ East, 0.302 chains and another White Oak 8 inches in diameter bears North 85° W., 0.434 chains; thence East 32.544 chains to a point in the center of a county road; thence along said County road North 1° 45′ East, 1.28 chains to an iron pipe; thence North 75° 55′ East, 11.03 chains to the western right of way line of Missouri U. S. Highway 40 TR; thence along said right of way line as follows: S. 17° 28′ East, 398.6 feet, S. 72° 32′ W., 50 feet, S. 17° 28′ East, 501.3 feet to a stake on the Northern line of the right of way of the Missouri, Kansas and Texas Railway Company; thence along the Northern line of said railroad right

of way S. 74° 58′ West; 10.96 chains to an iron pipe in the center of a county road; thence S. 74° 46′ West, 0.91 chains to an iron pipe driven on the Section line; thence along the Section line betwe n Sections 3 and 34 West 35.39 chains to the place of beginning and containing 55.816 acres exclusive of that part lying within the county road.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a commission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

[fol. 36] The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company showing title to be good and marketable as vested in the United States of America, free of all liens and encumbrances. In the event the title shall be unmerchantable, the under-

signed agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of America, the agreed purchase price above mentioned will be paid by the Government to the undersigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all [fol. 37] the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at St. Louis, Missouri, this 9th day of December, 1940.

M. Wilson
M. Wilson

EDGAR S. ALBRECHT,
GERALDINE ALBRECHT,
ALBERT W. ALBRECT, JR.
VIRGINIA ALBRECHT.

Witness:
R. J. Schultz
A. W. Albrecht.

Accepted by and on behalf of the United States of America this 17th day of December, 1940.

C. J. HARROLD,
Major QMC
United States Army

[fol. 38] Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option.

(Filed March 30, 1945)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for defendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest, and as reasons for said motion states:

(1) That this suit was filed by plaintiff to acquire, by condemnation, the real estate described in the petition filed in this cause, that a Declaration of Taking was filed and the sum of $2,232.00 was deposited in the Registry of the Court as the estimated just compensation for said real estate;

(2) That prior to the filing of the petition in this cause the defendants and the plaintiff, through the War Department, had executed an option contract for the purchase by the United States of America from the defendants the said real estate for the sum of $21,425.00, being the amount of compensation fixed in said option contract;

(3) The United States Supreme Court in the case of Muschany vs. United States, 89 L. Ed. Adv. Op. 492 (1945) has held an option contract to be valid and bind-
[fol. 39] ing, which option contract is identical with the provisions of the option contract in this case with the exception of the names of the owners, the description of the property and the amount of compensation;

(4) That the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands described in plaintiff's petition for the purposes therein defined and against the defendants named in this cause, and against each and all of them, jointly and severally, as their rights may appear, and that the defendants, and each and all of them, jointly and severally are entitled to compensation in solido in the sum of $21,425.00, without

interest, being the full amount of the compensation mentioned in said option contract;

(5) That R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, under the terms and conditions of the said option contract, have, or may have, some right, title or interest in and to the said sum of $21,425.00 mentioned in said option contract.

Wherefore, plaintiff moves the Court to enter judgment in this cause for the condemnation of the said real estate, fixing the compensation to be paid by plaintiff to the defendant in the sum of $21,425.00, and directing plaintiff to pay into the Registry of the Court the deficiency of $19,193.00 and to make an order citing all persons and corporations, including the said R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, claiming an interest in the said fund to appear in this Court and to set up and file their claims therefor.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 30th day of March, 1945.

[fol. 40] Order Setting Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option for Hearing.

(Filed April 2, 1945.)

On oral motion of the plaintiff, by its attorneys, it is Ordered by the Court that the Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option filed by plaintiff in this cause be and the same is hereby set for hearing on the 7th day of May, 1945;

And it is further Ordered that the plaintiff give notice of the date fixed for the hearing of said motion to all defendants in this cause and to their attorneys of record by mailing to each of said defendants, whose places of

residence are known, and their attorneys and to R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option and a copy of this order, and by posting in the office of the Clerk of this Court in the City of St. Louis, Missouri a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option, together with a copy of this order, at least ten days before the time fixed in this order for the hearing of said motion.

R. M. DUNCAN,
United States District Judge.

Dated this 2nd day of April, 1945.

[fol. 41] Answer Of Defendants Edgar S. Albrecht, Geraldine Albrecht, His Wife, Albert W. Albrecht, Jr., And Virginia Albrecht, His Wife, To Plaintiff's Motion For Judgment In Condemnation And Fixing Compensation By Option And Without Interest, And Motion By Said Defendants For Judgment.

(Filed May 2, 1945.)

Come now the defendants Edgar S. Albrecht, Geraldine Albrecht, his wife, Albert W. Albrecht, Jr., and Virginia Albrecht, his wife, in response to the motion heretofore filed in this cause praying the Court to give judgment for plaintiff in condemnation and to fix defendants' compensation in the amount of the option contract therein referred to but without interest on said amount, and for answer to said motion, these defendants say:

(1) Defendants admit that, as alleged in paragraph (1) of said motion, the suit was filed, and that the declaration of taking was filed, and that the sum of $2,232.00 was deposited in the registry of this Court as the estimated just compensation for the value of the real estate described in the petition filed in this cause; and, in this connection, defendants allege that all of said things were done on the 9th day of April, 1941.

(2) These defendants admit that the contract referred to as the option contract was duly made and entered into as alleged in paragraph (2) of said motion.

(3) These defendants admit the statements contained in paragraph (3) of said motion.

(4) These defendants admit that the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands of these defendants described in the petition for condemnation long since filed herein, and they admit that the sum of $21,425.00 is the amount that was agreed upon in said option contract as the value of said property as of the date of taking thereof, as alleged in paragraph (4) of said motion; but they deny that the plaintiff has any right to avoid payment of interest on said amount, and these defendants allege that they are entitled to a judgment in their favor for the sum of $21,425.00, with interest at six per cent per annum on said amount from the date of the taking of the lands described in said petition, which was on or about December 17, 1940, to the making of the deposit herein referred to on the 9th day of April, 1941, and interest at six per cent per annum on the sum of $19,193.00 (being the difference between said sum of $21,425.00 and the amount paid into this Court at the time of the filing of the declaration of taking, to-wit, the sum of $2,232.00), from the said 9th day of April, 1941, until the same is paid, and these defendants pray that judgment be entered accordingly.

[fol. 42] (5) These defendants allege that no person other than these defendants owned any interest whatever in the lands above referred to prior to the filing of the aforesaid declaration of taking by plaintiff on or about the 9th day of April, 1941, nor is any person other than these defendants entitled to any part whatsoever of the proceeds of the judgment to be entered in this case fixing the amount of compensation to be awarded for said lands; and that, therefore, these defendants pray the Court to find by its order and judgment that these defendants alone are entitled to the

amount of such judgment and such interest as the same may bear until the same is paid, as above set out.

GEO. EIGEL,
722 Chestnut Street,
St. Louis, Missouri,
Attorney for Defendants Albert W. Albrecht, Jr., and Virginia Albrecht, His Wife.

IGOE, CARROLL, KEEFE & COBURN,

ROBERTS P. ELAM,
1530 Boatmen's Bank Building,
St. Louis, Missouri,
Attorneys for Defendants Edgar S. Albrecht and Geraldine Albrecht, His Wife.

Receipt of a copy of the above and foregoing answer and motion is hereby acknowledged this.....day of May, 1945.

.....
United States Attorney

[fol. 43] (List of Checks deposited in Registry of District Court to cover certain Lands in Weldon Spring Ordnance Project.)
(Filed May 17, 1945.)

In The United States District Court
Eastern District Of Missouri
Eastern Division

Weldon Spring Ordnance Project

Cases No. 767	—	Deficiency	—	$26,900.04	818 —	Def. —	$114.00
765	—	"	—	7,028.20	817 —	" —	8,140.00
766	—	"	—	22,365.00	820 —	" —	19,193.00
763	—	"	—	3,125.00	822 —	" —	6,760.00
764	—	"	—	22,791.00	824 —	" —	4,770.00
771	—	"	—	6,170.00	823 —	" —	13,992.00
772	—	"	—	660.00	854 —	" —	6,100.00
777	—	"	—	5,855.00	877 —	" —	3,725.00
778	—	"	—	2,935.20	865 —	" —	567.00
779	—	"	—	3,967.83	866 —	" —	7,510.00
780	—	"	—	2,000.00	863 —	" —	932.50

781	"	875.00	873	"	7,457.20
782	"	5,792.00	872	"	6,900.00
783	"	5,700.00	858	"	3,443.00
784	"	4,368.00	860	"	8,040.00
785	"	34,250.00	859	"	16,480.00
786	"	2,630.18	862	"	2,200.00
796	"	19,694.00	879	"	1,440.00
805	"	21,511.25	875	"	5,729.00
812	"	6,080.00	876	"	7,695.00
810	"	110.00	856	"	4,300.00
813	"	4,428.75	868	"	1,380.00
814	"	7,283.00	869	"	3,697.00
797	"	3,825.00	960	"	48,500.00
806	"	2,940.00	978	"	14,132.00
808	"	11,140.00	985	"	1,240.00
811	"	5,435.00	988	"	21,374.25
834	"	4,878.00	984	"	1,500.00
841	"	8,670.00	999	"	2,140.00
833	"	2,150.00	1000	"	500.00
840	"	3,580.00	1001	"	2,500.00
832	"	760.00	1002	"	11,115.25
827	"	7,940.00	1003	"	29,297.00
843	"	4,620.00	979	"	7,120.00
830	"	1,200.00	981	"	25,000.00
829	"	312.00	980	"	16,312.50
839	"	4,860.00	989	"	3,100.00
838	"	2,440.00	986	"	2,600.00
844	"	1,493.36	987	"	18,000.00
835	"	6,960.00	992	"	933.00
826	"	3,760.00	993	"	3,617.00
852	"	17,460.00	994	"	1,100.00
853	"	850.00	995	"	16,000.00
774	"	1,563.00	997	"	20,400.00
798	"	8,260.00	991	"	1,750.00
803	"	4,100.00	1006	"	3,600.00
789	"	10,820.00	1010	"	32,804.45
792	"	9,775.74	1015	"	23,129.45
800	"	36,720.00	1014	"	450.00
790	"	8,440.00	1021	"	7,140.00
791	"	9,042.00	1019	"	12,174.00
793	"	5,100.00	1020	"	6,170.20
794	"	17,985.00	1648	"	1,670.00
804	"	14,780.00	1652	"	2,723.00
819	"	3,050.00			

$920,085.35

[fol. 44] Check No. 8,051,506 $87,595.70
8,051,507 48,500.00
8,051,508 4,393.00
8,051,509 115,932.50
8,051,510 182,604.74

——————8,051,511	————— 85,468.10
——————8,051,512	————— 229,583.57
——————8,051,513	————— 7,028.20
——————8,051,514	————— 83,798.54
——————8,051,515	————— 22,365.00
——————8,051,516	————— 26,900.00
——————8,051,517	————— 22,791.00
——————8,051,518	————— 3,125.00
	$920,085.35

of the Treasurer of the United States, in the sum of $920,085.35, to the order of the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, deposited by the plaintiff for the lands described in the petitions, the aforesaid sum of $920,085.35 being deposited by the plaintiff in the Registry of the Court herein as to the aforesaid lands, for the use and benefit of the person or persons entitled thereto, the same to be applied under orders of this Court.

HARRY C. BLANTON,
United States District Attorney.

Received the above mentioned checks and deposited same in the Registry of this Court, this 17th day of May, 1945.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.

[fol. 45] Opinion.

(Filed June 22, 1945.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,

vs.

Certain Land In St. Charles County, Missouri, Known As The Weldon Spring Area, Defendants.

No. 782: No. 840: No. 980:
No. 784: No. 844: No. 984:
No. 804: No. 852: No. 988:
No. 820: No. 854: No. 994:

No. 822: No. 862: No. 1002:
No. 824: No. 868: No. 1020:
No. 832: No. 872: No. 1648:
No. 834: No. 878: No. 1652
No. 838: No. 978: .....

The above cases, together with the cases pending in each of the other divisons of this court, for the purpose of avoiding repetition of the argument before each judge, were argued before the judges of the three divisions sitting en banc.

I have carefully studied the records and the briefs submitted, as well as the Memorandum Opinions written by my colleagues Judge Moore and Judge Hulen. In view of the fact that the other judges have written conflicting opinions respecting their views and have arrived at different conclusions, I see no necessity for filing an extended opinion on my part.

I am of the opinion that the defendants are entitled to interest on the difference between the amount deposited in the registry of the court at the date of the filing of the Declaration of Taking and the amount specified in the option agreement until such difference is deposited in the registry of the court for the benefit of the defendants.

I am also of the opinion that the owners are not entitled to interest from the date of the taking of possession by the Government under the option agreements, until the filing of the Declarations of Taking.

I therefore concur in the conclusions reached by my colleague Judge Moore in his Memorandum Opinion filed on June 8, 1945.

Judgments may be submitted for approval, allowance and entry.

R. M. DUNCAN,
United States District Judge.

Dated this 22nd day of June, 1945.

[fol. 46] Findings and Judgment.

(Filed June 29, 1945.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 820. vs. At Law.
59.11 Acres Of Land, More Or Less, Situate In The County Of St. Charles, State Of Missouri, Known As Tract No. 245, And Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., Virginia Albrecht, Collector Of Revenue Of St. Charles County, Missouri, And County Of St. Charles, State Of Missouri, Defendants.

Now on this day, the Court having heretofore heard a motion filed by the plaintiff for judgment for plaintiff in condemnation and fixing the amount to be paid the defendants at the price agreed to by option contract referred to and set up in the answer filed by the defendants herein, without interest, and an answer and countermotion thereto by the defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht for judgment, including interest, and evidence having been heard, and arguments of counsel having been made, and said motions taken under advisement, and the Court being now fully informed in the premises, doth find:

That this is a proceeding in condemnation, instituted by the United States of America, as plaintiff, against Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., Virginia Albrecht, Collector of Revenue of St. Charles County, Missouri, and County of St. Charles, State of Missouri, as defendants, to condemn the land hereinafter described, as in [fol. 47] such cases made and provided by the laws of the United States of America, and in which there was filed a Declaration of Taking as provided for by Title 40 United States Code, Section 258a.

That all of the defendants have been duly [servied] with process as required by law, or have duly entered their appearances herein; and that this Court has jurisdiction of the subject matter of this cause, and of all of the parties thereto.

That prior to the filing of the petition herein and prior to any proceedings in connection therewith, including the filing of a Declaration of Taking in this cause, the defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht and the plaintiff, through the War Department of the United States, entered into and executed a contract, sometimes referred to as an "option contract," which was accepted by the plaintiff in accordance with the terms thereof, whereby and as a result of which the plaintiff agreed to purchase and the said last named defendants agreed to sell to the plaintiff, for the price and sum of $21,425.00, the real estate or land hereinafter described.

That the said defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht were at the time of executing said option contract, and the filing of said Declaration of Taking, the owners in fee simple of the land hereinafter described.

That, upon the acceptance by the plaintiff of said option contract, on or about the 17th day of December, 1940, possession of the land hereinafter described was taken by, and has ever since been in, the plaintiff, United States of America.

That, since this proceeding was instituted and the Declaration of Taking filed herein, the Supreme Court of the United States has held binding on the parties thereto, in so far as concerns the worth or value of the land at the time of taking by the United States of America, an option contract for the sale of land, the provisions of which and the circum- [fol. 48] stances [surroundint] the execution of which are the same as the option contract executed by the plaintiff and the defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht, except as to dates, the names of the land owners, the description of the property, and the sale price. That, under the aforesaid decision of the Supreme Court of the United States and the terms and provisions of the option contract executed by the plaintiff and the defendants Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht the sum of $21,425.00 was and is the purchase price agreed upon in said option contract as the value or worth of the

land hereinafter described at the time of the taking thereof by plaintiff, and said defendant land owners were entitled to said sum of $21,425.00 for the taking of said land hereinafter described, as of the date of the taking of said land.

That on the 9th day of April, 1941, prior to the aforesaid decision of the Supreme Court of the United States, the plaintiff herein caused to be filed in this cause a Declaration of Taking of the land hereinafter described, by Henry L. Stimson, Secretary of War of the United States, and, upon the filing of said Declaration of Taking, the fee simple title to the land therein described, and hereinafter described, became vested in the United States of America, the plaintiff herein, and the title to and possession of said land was then and has ever since been in the plaintiff, United States of America, and none of the defendants has since had any right, title or interest in said land.

That at the time of the filing of said Declaration of Taking by Henry L. Stimson, Secretary of War of the United States, there was deposited by the plaintiff in the registry of this Court the sum of $2,232.00 as the then estimated compensation stated in said Declaration of Taking for the [fol. 49] appropriation and taking by plaintiff of the fee simple title to the land in said declaration described, and hereinafter described; but that said deposit was erroneous and insufficient in that the same failed to equal the agreed value or worth of said land hereinafter described at the date of the taking and appropriation thereof by plaintiff.

That on the 17th day of May, 1945, there was deposited in the registry of this Court by plaintiff an additional sum of $19,193.00 as additional compensation for the taking and appropriation by plaintiff of the fee simple title to the land in said Declaration of Taking described, and hereinafter described.

That the said deposits heretofore made by plaintiff into the registry of this Court were erroneous and insufficient, in that the same failed to include interest on the $19,193.00 withheld from the registry of this Court during the period from the filing of the Declaration of Taking herein on the 9th day of April, 1941, until the 17th day of May, 1945, which interest defendant land owners were and are entitled to re-

ceive as a part of the just compensation for the taking and appropriation by plaintiff of the land hereinafter described.

That the plaintiff's petition and the proceedings in this cause set forth a cause of action for the purpose of acquiring, by proceedings in condemnation, the fee simple title to the land hereinafter described, which land was and is necessary to provide for the establishment of an ordnance plant for the national [defendse] of the United States of America and for other military use incidental thereto in connection with the Weldon Spring Ordnance Plant; and that the awarding to the plaintiff of a judgment in condemnation, and the awarding to the defendant land owners of full just compensation for said land, in this condemnation proceeding, will perfect in the plaintiff, and divest from defendants, finally and completely, the title to the land hereinafter described, in conformity with the law of the United [fol. 50] States of America.

That the land described in plaintiff's petition, known as Tract No. 245, is the land described in the Declaration of Taking referred to herein, and is bounded, defined and described as follows:

"59.11 acres of land, more or less, situated in St. Charles County, Missouri, and more particularly described as follows:

"A tract of land located within Sections 34 and 35, Township 46 North, Range 3 East, described as follows: Beginning at an old stone at the southwest corner of the SE¼ of Section 34; thence North 12.254 chains to an iron pipe; thence East 32.544 chains to a point in the center of a County Road; thence along said County Road North 1 degree 45 minutes East 1.28 chains to an iron pipe; thence North 75 degrees 55 minutes East 12.47 chains to the center right of way line of Missouri U. S. Highway 40 Tr; thence along center line of said right of way, South 17 degrees 28 minutes East 975 feet, more or less, to center line of right of way of the M. K. & T. Railroad Company; thence along the center line of said railroad right of way South 74 degrees 58 minutes West 13.12 chains more or less, to an iron pipe in the center of a county road; thence along the section line between Sections 3 and 34 West 35.39 chains to the place of beginning, situated in St. Charles County, Missouri, and

containing 59.11 acres more or less, subject to all existing highway and public utility easements, but including the fee underlying such existing easements, subject also to right of way easement of M.K.&T. Railroad Company."

That the plaintiff's said motion for judgment should be sustained in part, but should be denied in so far as the same seeks to prevent defendant land owners from receiving any interest as a part of the full compensation to be allowed them for said land.

That the defendant land owners' said motion for judgment should be sustained in part, and denied only in so far as the same prays interest on the said sum of $21,425.00 from the date of the taking of physical possession of said land on or about December 17, 1940, to the filing of the Declaartion of Taking herein on the 9th day of April, 1941, and interest on the sum of $19,193.00 subsequent to May 17, 1945.

Now, therefore, in accordance with the above findings [fol. 51] of fact, it is Ordered, Adjudged And Decreed that:

(1) Plaintiff, United States of America, by virtue of this proceeding, is awarded judgment in condemnation against the premises described in plaintiff's petition and hereinabove described, for the purposes herein defined and specified, and against the defendants herein, and each and all of them, jointly and severally, as their title and rights may appear, and that the title in fee simple, subject to all [exising] highway and public utility easements but including the fee underlying such existing easements, is vested in the plaintiff, United States of America, and has been vested in the plaintiff, United States of America, upon and since the filing of the Declaration of Taking, and the defendants, and each and all of them, jointly and severally, are divested of any and all right, title, interest and claim, of every nature and description, in the land above described.

(2) That in accordance with the option contract executed by the plaintiff, United States of America, and the defendant land owners, and accepted by the United States of America, the defendant land owners are entitled to and there is awarded to them the sum of $2,425.00 as and for the

agreed value or worth of said land, as of the date of the filing of the Declaration of Taking herein, together with interest on $19,193.00 of said sum at the rate of six per cent per annum from the 9th day of April, 1941, until the 17th day of May, 1945, which said sum of $21,425.00 and said interest constitute the full just compensation to which defendant land owners, and any and all other persons who may be found entitled thereto as claiming by, through or under them, are entitled in this cause for said land.

(2) That the plaintiff shall pay into the registry of this Court forthwith the sum of $4,727.87, being the equivalent [fol. 52] of six per cent interest on said sum of $19,193.00 from the 9th day of April, 1941, to the 17th day of May, 1945, as that part of the just compensation to which defendants are entitled for the taking by plaintiff of said land herein described which has not been heretofore deposited in the registry of this Court by plaintiff, which amount, together with the amounts heretofore deposited in the registry of this Court, shall repose in the registry of this Court for the use and benefit of the defendant land owners, and other defendants claiming an interest therein by and through the defendant land owners, and for disposition in the way, manner and proportion as this Court shall hereafter order, adjudge and decree.

(4) That this cause shall be held open for entry of such further and other orders and decrees as may be meet and just in the premises.

Dated this 29 day of June, 1945.

R. M. DUNCAN,
United States District Judge.

[fol. 53] (Motion of Plaintiff for New Trial.)

(Filed July 7, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial for the following reasons;

1. The Court erred in holding that this is an adversary condemnation proceeding;

2. The Court erred in not holding that this is a friendly condemnation proceeding according to the terms and provisions of the option-contract;

3. The Court erred in not holding that the filing of the equitable answer by the property owners converted this condemnation proceeding into an equitable action for the enforcement of the option-contract;

4. The Court erred in holding that this condemnation proceeding differs in no respect from any other condemnation proceeding except in the method of ascertaining the value of the land;

5. The Court erred in not holding that the equitable answer filed by the property owners in this case and the decision of the Supreme Court of the United States upholding the validity of the option-contract and the allegations of the equitable answer took the case out of the operation of the Declaration of Taking part of this condemnation proceeding;

[fol. 54] 6. The Court erred in holding that there was an ascertainment of the value of the land in this proceeding, for it has never been ascertained by this Court nor by any Appellate Court;

7. The Court erred in not holding that the compensation was not ascertained in this proceeding but that on the contrary it was fixed by the option-contract and the opinion of the Supreme Court of the United States holding such option-contract to be valid and binding upon the plaintiff;

8. The Court erred in its construction of the option-contract;

9. The Court erred in holding that the amount mentioned in the option-contract was the fair market value of the land involved in this case at the time of the filing of the Declaration of Taking in this case;

10. The Court erred in not holding that the sum mentioned in the option-contract is the full compensation to which the property owners are entitled in this proceeding;

11. The Court erred in its definition as to what constitutes just compensation;

12. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty to be paid by the plaintiff for its failure to perform the conditions of the option-contract immediately after its acceptance by the Government;

13. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty against the Government for litigating the validity of the option-contract;

14. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty for the Government's delay in the payment of the amount mentioned in the option-contract when such delay was caused by the vigilance and diligence of plaintiff's Officers and Attorneys in litigating the validity of the option-contract, and with the acquiescence of the defendant property owners;

[fol. 55] 15. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty without citing some statute authorizing such penalty;

16. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to promptly perform and fulfill the provisions and conditions of the option-contract;

17. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to fully and completely perform and fulfill the provisions and conditions of the option-contract;

18. The Court erred in its construction of the opinion of the Supreme Court of the United States in the Andrews and Muschany cases;

19. The Court erred in not holding that the Supreme Court of the United States held that the amount mentioned in the option-contract was full and complete compensation when the Supreme Court said:

"The offer was to sell to the Government at a fixed, definite price. The Government when it accepted this

offer, agreed to pay this set amount and no more. The contract contains no provision allowing adjustment of price based on possible future indeterminate expenses . . . The Government knew the total cost when it became bound on the contract." (emphasis added)

20. The Court erred in holding that the burden of proof is upon the Government to show the absence of any contract obligation to pay interest or any statute providing for interest;

21. The Court erred in not holding that the burden of proof is upon the property owners to point out the exact provision of the contract providing for interest or to point out the exact provision of the statute providing for interest and a full compliance by the property owners with such statute;

[fol. 56] 22. The Court erred in allowing interest upon any part of the amount mentioned in the option-contract and for any period of time;

23. The decision of the judgment now entered is contrary to the views of the Court when the question of the option was first presented to the Court in the Muschany and Andrews cases when the District Courts held in the Findings of Fact and Conclusions of Law that the property owners were entitled to recover only the principal amount named in the option without interest;

24. That as the Supreme Court, the Court of Appeals and the District Court all held in passing on the McDowell option that the amount included therein included not only the value of the land but compensation to the title company, compensation to McDowell by way of commission, and other expenses, to now allow interest on the entire sum to the property owner would be to allow him interest on not only the value of his land but also on other items which do not belong to him, but which, in truth and in fact, are being paid by the Government and not by the property owners to the title company and to McDowell;

25. That by including all of these elements in the amount named in the option, as well as the value of the land, the parties conclusively show that they were consid-

ering the amount of the option to be the total and entire amount to be paid by the Government as full compensation for the land and the other elements named therein, and further show that it was the intention of the parties that that amount and no additions thereto by way of interest was to be paid by the Government;

26. That the Court erred in holding that the amount named in the option represented the value of the land in view of the holding of the Supreme Court that it did not represent that amount at all, but that it represented the agreed purchase price, and in view of the fact that the option contract itself repeatedly refers to it as the agreed [fol. 57] purchase price and not value;

27. That the position of the land owners in asking for interest under the Declaration of Taking Statute is inconsistent with their prior position heretofore asserted that they were entitled to have the option contract enforced as an option contract and that said contract not calling for interest, having failed to provide for the payment of interest, does not now entitle the landowners to interest in addition to the principal amount named therein;

28. The Court erred in finding that, upon the acceptance by the plaintiff of the said option-contract the possession of the land involved herein was taken by, and has ever since been in the plaintiff, the United States of America, because there was no evidence to sustain the said finding of fact;

29. The Court erred in not holding that the right to immediate possession of the land was included in the consideration mentioned in the option-contract and that such right of immediate possession was contracted for in the said option-contract and that the payment of the consideration mentioned in the option-contract is full payment for the land herein involved and for the right to immediate possession thereof obtained by the plaintiff under such option-contract;

30. The Court erred in holding that there was a taking under the Declaration of Taking filed in this cause such as contemplated by the Declaration of Taking Stat-

ute because the right to possession of the property had theretofore been contracted for under the terms and provisions of the option-contract;

31. The Court erred in holding that the property owners are entitled to interest under the provisions of the Declaration of Taking Statute because there was no taking under the Declaration of Taking which could authorize the allowance of interest under such statute;

[fol. 58] 32. The Court erred in holding that there was an ascertainment of just compensation in this proceeding such as is mentioned and contemplated in the Declaration of Taking Statute, in order to warrant the inclusion, as part of the just compensation awarded, of interest at the rate of 6% per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment, or upon such part of the amount finally awarded as was not deposited contemporaneously with the Declaration of Taking;

33. The Court erred in holding that the two deposits made in this case, the first with the Declaration of Taking and the second on May 17, 1945 were erroneous and insufficient in that they failed to include any interest;

34. The Court erred in its judgment and decree entered in this cause by adding interest at the rate of 6% per annum upon the deficiency or upon the difference between the amount deposited with the Declaration of Taking and the amount mentioned in the option-contract;

35. The Court erred in its judgment and decree entered in this cause by including interest at the rate of 6% per annum from the date of the Declaration of Taking in this cause to May 17, 1945 upon the amount deposited in the Registry of this Court on the said 17th day of May, 1945;

36. The Court erred in its judgment and decree entered in this cause by requiring the plaintiff to pay into the Registry of the Court forthwith a sum of money equivalent to 6% interest on the sum deposited in the Registry of this Court on May 17, 1945 from the date of the Declaration of Taking in this case to the date of said deposit on May 17, 1945 as a part of the just compensation to

which the defendants are entitled for the taking of the lands involved in this cause;

[fol. 59] 37. The Court erred in its findings and in its judgment and decree in the computation of the amount of the interest adjudged to the defendants upon the deficiency from the date of the Declaration of Taking to May 17, 1945;

38. The Findings and Judgment entered in this cause are contrary to and against the evidence under the law, are contrary to and against the law under the evidence and are contrary to and against the law and the evidence;

Wherefore, Plaintiff moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial herein.

HARRY C. BLANTON,
United States Attorney,

RUSSELL VANDIVORT,
Assistant United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 7th day of July, 1945.

[fol. 60] (Order overruling Motion of Plaintiff for New Trial.)

November 26, 1945.

Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defendants, and overruled.

[fol. 61] Statement of Points to be Relied Upon on Appeal.

(Filed December 7, 1945.)

In the United States District Court for the Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 820. vs. At Law.
59.11 Acres of land, more or less, situate in the County of St. Charles, State of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., Defendants.

The United States of America, appellant in the above-entitled case, states that the following points will be relied upon on the appeal:

1. The district Court erred in denying the Plaintiff's motion for judgment fixing compensation in the amount of the option contract price, without interest.

2. The district Court erred in entering judgment with interest on $19,193.00, the difference between $21,425.00, the amount of the option contract price, and $2,232.00, the sum deposited with the Declaration of Taking, from the 9th day of April, 1941, the date of the filing of the Declaration of Taking, to the 17th day of May, 1945, the date of the deposit in court of such difference.

3. The district Court erred in overruling plaintiff's motion for a new trial.

Respectfully submitted,

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

Copy mailed to Opposing Counsel this 7th day of December, 1945.

HARRY C. BLANTON,
United States Attorney.

[fol. 62] Designation of the Record on Appeal.

(Filed December 7, 1945.)

United States of America, Appellant in the above entitled cause, designates for inclusion in the Transcript of the Record on Appeal the pleadings, Proceedings and evidence as follows:

	Filed
(1) Petition in Condemnation as amended September 15, 1941	April 9, 1941
(2) Declaration of Taking, in Cause No. 770, omitting therefrom all names from the caption except the defendants Edgar S. Albrecht and Albert W. Albrecht, Jr., and omitting from the paragraph describing the parcels of land in said Declaration all except Tract No. 245	April 7, 1941
(3) Order and Judgment vesting Title in the Plaintiff as to Tract No. 245 and Order of Immediate Possession	April 9, 1941
(4) Order directing transfer of $2,232.00 to this cause for the use and benefit of the defendants in this cause	April 9, 1941
(5) Answer of defendants Edgar S. Albrecht and Geraldine Albrecht to Plaintiff's petition	July 2, 1941
(6) Answer of Albert W. Albrecht, Jr., and Virginia Albrecht to Plaintiff's petition	Sept. 4, 1941
(7) Motion of Plaintiff for Judgment in condemnation and judgment for defendants fixing compensation by option-contract	March 30, 1945

[fol. 63] (8) Order setting for hearing on May 7, 1945, the Motion of Plaintiff for Judgment in Condemnation — April 2, 1945

(9) Answer of defendants Edgar S. Albrecht, et al., to Plaintiff's Motion for Judgment in condemnation and fixing compensation by option-contract without interest, and Motion of said defendants for judgment with interest — May 2, 1945

(10) Receipt of Clerk for $19,193.00 paid into the Registry of the Court — May 17, 1945

(11) Memorandum Opinion of the Court finding the issues in favor of the defendants and against the Plaintiff — June 22, 1945

(12) Findings and Judgment — June 29, 1945

(13) Plaintiff's Motion for a New Trial — July 7, 1945

(14) Docket entry of November 26, 1945 overruling Plaintiff's Motion for a New Trial

(15) Plaintiff's notice of appeal — Nov. 27, 1945

(16) Appellant's Statement of Points

(17) Clerk's Docket entries

(18) This Designation of the Record

(19) All other pleadings and documents filed in connection with this appeal.

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

.....
Special Assistant United States Attorney.

Copy mailed to Opposing Counsel this 7th day of December, 1945.

HARRY C. BLANTON,
United States Attorney.

[fol. 64] Clerk's Certificate.

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.:

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the above and foregoing to be a full, true and complete transcript (except in so far as the same is restricted by the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 820, wherein the United States of America is plaintiff-appellant and 59.11 Acres of land, more or less, situate in the County of St. Charles, State of Missouri, Known as Tract No. 245, and Edgar S. Albrecht, et al., are defendants-appellees, as fully as the same remains on file and of record in my office.

Seal of U. S. Dist. Court East. Div. of the East. Judicial Dis. of Mo.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said court at office in the City of St. Louis, Missouri, in said Division of said District this 12th day of December, in the year of our Lord, Nineteen Hundred and Forty-five.

JAMES J. O'CONNOR,
Clerk, U. S. District Court,
By John J. Jarvis,
Deputy Clerk.

Filed Dec. 12, 1945, E. E. Koch, Clerk.

[fol. 1] Notice of Appeal.)

(Filed November 28, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 800. vs. At Law.
356.51 Acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty and Investment Company, a Corporation, et al., Defendants.

Notice is hereby given that the United States of America, Plaintiff in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final judgment entered in this cause on the 26th day of November, 1945.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 28th November 1945.

[fol. 2] Docket entry showing filing notice of appeal and mailing copy of such notice to atty. of record for landowner defendant.

(November 28, 1945.)

Notice of appeal to the United States Circuit Court, 8th Circuit from final judgment entered herein November 26, 1945 filed and copy of said notice forthwith mailed by the Clerk of the Court to Samuel M. Watson, Esq., atty. of record for landowner defendant.

[fol. 3] (Clerk's Docket Entries of Case No. 800.)

United States Of America, Plaintiff,
Docket No. 800. vs. At Law.
356.51 Acres of land, more or less, situate in St. Charles County, State Of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty And Investment Company, a Corporation, et al., Defendants.

4-9-41	Motion of plaintiff for leave to file petition in condemnation and for order for summons filed and presented and granted in order filed and entered; petition in condemnation filed and summons issued directed to defendants returnable May 19, 1941; on oral motion of plaintiff, order and judgment filed and entered on Declaration of Taking filed April 7, 1941, in Cause No. 770 vesting fee simple title in plaintiff as to tract designated herein and directing delivery of immediate possession to plaintiff; order filed and entered directing notice be given to defendants of judgment on Declaration of Taking and of requirement for immediate delivery of possession to plaintiff; on oral motion of U. S. Attorney, order filed and entered directing transfer of $15,280.00 to this Cause for the use and benefit of defendants entitled thereto from the sum heretofore deposited by plaintiff in Registry under Declaration of Taking filed in said Cause No. 770, being the estimated compensation for said Tract No. 174 herein.
5-19-41	Answer of defendant, Q.W.S.S. Realty & Investment Company to plaintiff's petition in condemnation, filed.
5-19-41	Marshal's Return of service to summons and order filed. (Executed)
5-19-41	On motion of U. S. Attorney, order filed and entered continuing cause to June 2, 1941.
5-29-41	Upon oral application, plaintiff granted 30 days from this date within which to plead to answer of defendant, Q.W.S.S. Realty & Investment Co., in order filed and entered.

6- 2-41 On motion of U. S. Attorney, order filed and entered continuing cause to June 16, 1941.

6-16-41 On motion of U. S. Attorney, order filed and entered continuing cause to June 30, 1941.

6-30-41 Order filed and entered continuing cause to Sept. 15, 1941.

7-24-41 On motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend its petition herein by joining H. H. Steed, Trustee, et al., as additional parties defendant and directing issuance of summons to such defendants returnable Sept. 15, 1941.

7-30-41 Return of Marshal of the Western Dist., of Missouri to summons filed. (Executed)

[fol. 4] 9-15-41 On motion of U. S. Attorney, order filed and entered continuing case to October 14, 1941. Division No. 3

9-16-41 Marshal's Return of service to summons, filed, (Executed)

10-14-41 On oral motion of U. S. Attorney, order filed and entered continuing case to Nov. 3, 1941.

11- 3-41 On oral motion of U. S. Attorney, order filed and entered continuing cause to January 14, 1942.

1-14-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to April 30, 1942.

3- 4-42 On motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition by deletion and interlineation as to land description.

4- 8-42 Upon motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition by adding Willie Wackher, etc., as party defendant, and directing the issuance of summons to such defendant returnable May 10, 1942.

4-10-42 Upon oral motion of plaintiff, order filed and entered amending order to implead a defendant

filed herein April 8, 1942 by changing the return date of such order from May 10, 1942 to May 11, 1942.

4-30-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to May 11, 1942.

5- 6-42 Marshal's Return of service to summons, filed (Not executed).

5-11-42 Upon oral motion of U. S. Attorney, order filed and entered directing issuance of alias summons to defendant Willie Wackher, etc., returnable June 3, 1942. Upon oral motion of U. S. Attorney, order filed and entered continuing cause to June 3, 1942.

6- 3-42 Upon oral motion of U. S. Attorney, order filed and entered continuing cause to July 15, 1942.

6- 3-42 Marshal's Return of service to summons, filed. (Executed)

7-15-42 Order of Hon. Charles B. Davis continuing cause upon oral motion of U. S. Attorney to September 8, 1942, received, filed and entered.

9- 8-42 On oral motion of U. S. Attorney order filed and entered continuing cause to Dec. 8, 1942.

12- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to Jan. 8, 1943.

12-12-42 On motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition by adding James S. Martin etc., et al. as parties defendant and directing issuance of summons to defendant James S. Martin returnable January 8, 1943.

[fol. 5] 1- 7-43 Marshal's Return of service to summons filed. (Not executed)

1- 8-43 Upon petition of plaintiff filed and presented, order of publication filed and entered. On oral motion of U. S. Attorney, order filed and entered continuing cause to February 19, 1943.

1-16-43 Affidavit under Soldiers' and Sailors' Act as to defendants Willie Wackher, et al. filed by plaintiff.

2-17-43 Affidavit as to publication of order of publication filed by plaintiff.

2-19-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to May 11, 1943.

5-11-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to Nov. 12, 1943.

6- 3-43 Upon stipulation between plaintiff and defendants Q. W. S. S. Realty & Investment Company, et al. filed and presented, order for provisional disbursement from Registry of estimated compensation filed and entered.

11-12-43 On oral motion of U. S. Attorney, order filed continuing cause to February 10, 1944.

2-10-44 On oral motion of U. S. Attorney, order filed continuing cause to May 11, 1944.

5-11-44 On oral motion of U. S. Attorney, order filed continuing cause to November 3, 1944.

11- 2-44 On oral motion of U. S. Attorney, order filed passing cause heretofore set for November 3, 1944 to February 3, 1945.

2- 3-45 On oral motion of U. S. Attorney, order filed continuing cause to June 4, 1945.

3-20-45 Motion of plaintiff for judgment in condemnation and for judgment for defendants fixing compensation by option filed and presented, and order thereupon filed and entered setting said motion for hearing on April 4, 1945; vacating order heretofore entered continuing cause to June 4, 1945; directing plaintiff give notice by mail of such hearing to defendants, their attorneys, R. Newton McDowell and The Kansas City Title Insurance Company, as well as post notice of such hearing, etc.

3-21-45 Affidavit as to mailing of notice to defendants and other parties in interest of hearing on mo-

tion of plaintiff for judgment in condemnation and for judgment for defendants fixing compensation by option filed by plaintiff.

3-26-45 Claim of plaintiff in its own behalf and for Collector of Internal Revenue for the 6th Collection District of Missouri, asserted against any disbursement herein from Registry awarded to R. Newton McDowell, by reason of certain liens, interest and penalties thereon, filed.

[fol. 6] 3-30-45 Claim of intervening defendant Kansas City Title Insurance Company filed.

4- 2-45 Clerk's Return to posted notice filed.

4- 2-45 Amended answer of defendant Q. W. S. S. Realty & Investment Company to plaintiff's petition filed by leave, to which action of the Court plaintiff objects and is granted an exception.

4- 3-45 Motion of defendant Q. W. S. S. Realty & Investment Company for judgment in condemnation for plaintiff and for judgment for defendants fixing compensation by option, together with interest, etc., filed.

4- 4-45 Motion of plaintiff for judgment in condemnation and for judgment for defendants fixing compensation by option, argued and submitted on briefs to be presented; brief of movant forthwith submitted; defendants granted two weeks within which to submit answering brief and plaintiff five days thereafter within which to submit reply brief.

4-12-45 Petition of Blatchford Downing, Esq., attorney for R. Newton McDowell for leave to file brief as amicus curiae in support of proposition that land owners are entitled to interest on award from date of taking filed and proposed brief lodged therewith.

4-17-45 Petition heretofore filed of Blatchford Downing, Esq., as attorney for R. Newton McDowell to file brief lodged therewith as amicus curiae in support of proposition that land owners are entitled

to interest on award from date of taking, taken as submitted and said petition granted and aforesaid brief of petitioner heretofore lodged as aforesaid taken as presented.

5-17-45 Plaintiff tenders into Court to the use and benefit of persons entitled thereto, deficiency in the sum of $36,720.00, which sum is deposited by the Clerk in the Registry.

6- 4-45 Claim of R. Newton McDowell filed.

6- 7-45 Supplemental claim of U. S. asserted against any payment herein to R. Newton McDowell filed.

8- 9-45 Amended claim of the United States of America, filed.

8-14-45 Motion of Reconstruction Finance Corporation to intervene, together with proposed intervening petition of said Reconstruction Finance Corporation, filed.

8-23-45 Order of Hon. R. M. Duncan fixing September 8, 1945 as the time for filing of intervening petitions and fixing September 11, 1945 as the time for hearings thereof, received, filed and entered.

8-27-45 Affidavit of U. S. Attorney as to mailing a copy of notice to file intervening petitions respecting claim to money on deposit in the Registry of the Court, filed.

[fol. 7] 9- 7-45 Clerk's return to posted notice, filed.

9- 7-45 Motion of National Refining Company to intervene, with proposed intervening petition attached, together with affidavit as to service of aforesaid motion to intervene, filed.

9- 7-45 Affidavit as to mailing of notice to defendants to file intervening petitions for distribution of sum on deposit in Registry and of date set for hearing same, filed by plaintiff.

9- 8-45 Intervening petition of Globe Indemnity Company, filed.

9- 8-45 Claim of defendant Q. W. S. S. Realty & Investment Company to award filed.

9-11-45 Intervening petition of R. Newton McDowell heard, submitted and allowed in the sum of 5% of option price. Intervening petition of Kansas City Title Insurance Company continued to October 5, 1945 at ten A. M. Cause submitted for entry of order of distribution to record owners subject to claim of Kansas City Title Insurance Company.

9-14-45 Separate motions of National Refining Company and Reconstruction Finance Corporation to intervene, sustained and separate intervening petitions of aforesaid parties thereupon filed. Winston H. Woodson, Esq., attorney for Globe Indemnity Company and United States of America for and on behalf of Internal Revenue Collector of the 6th Collection District of Missouri, granted ten days from this date within which to file intervening petition herein.

10 -5-45 Samuel M. Watson, Esq., attorney for defendants landowners, orally consents to allowance of claim of Kansas City Title Insurance Company at 1½% of option price, and said claim allowed. Cause submitted for order of distribution to record owners.

November 26,—Order of partial distribution filed and entered.

November 26,—Findings and judgment filed and entered awarding plaintiff judgment in condemnation as well as awarding judgment for defendants fixing compensation, etc.

November 27,—Motion of plaintiff for a new trial filed.

November 27,—Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defts. and overruled.

November 28,—Plaintiff's notice of appeal to the United States Circuit Court of Appeals, 8th Circuit, from final judgment entered herein

November 26, 1945 filed and copy of said notice forthwith mailed by the Clerk of the Court to Samuel M. Watson, Esq., atty. of record for landowner defendant.

December 7,—Appellant's designation of record and (2) statement of points to be relied upon on appeal, filed.

[fol. 8] Petition in Condemnation.

(Filed April 9, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

Petition In Condemnation.

United States Of America, Plaintiff,
Docket No. 800. vs. At Law.
Tract No. 174

356.51 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 174, and

Q. W. S. S. Realty And Investment Company, a corporation

Collector Of Revenue Of St. Charles County, Missouri

County Of St. Charles, State Of Missouri, Defendants.

(H. H. Steed, Trustee
Order (Union Savings Bank Of St. Charles
(State Of Missouri
7/24/41 (Darst Bottom Drainage And Protective District
(No. 2
(Henry W. Mette

Order (William Wackher, otherwise known as W.
4/ 8/42 (Wackher, otherwise known as William Wack-
(her

(James S. Martin, if living, or if dead, then the
(Unknown Consort, heirs, devisees, donees,
(alienees, assignees and immediate, mesne or

	(	remote, voluntary or involuntary grantees of
Order	(	the said James S. Martin
	(	
	(	The Unknown Owner and Holder of Note for
	(	$5000.00, dated June 17, 1925, secured by
12/12/42	(	Deed of Trust in Book 150, page 128, of the
	(	deed records of St. Charles County, Missouri,
	(	in favor of Union Savings Bank of St.
	(	Charles

[fol. 9] To The Honorable, The Judges Of The United States District Court For The Eastern District Of Missouri:

Now Comes the plaintiff herein, the United States of America, a sovereign, by its attorneys, Harry C. Blanton, United States Attorney for the Eastern Judicial District of Missouri, and M. Walker Cooper, Special Assistant to the United States Attorney, and, leave of Court having been first obtained, files this, its petition herein, at the direction and under the authority of the Attorney General of the United States pursuant to the request of the Secretary of War of the United States, and represents unto the Court as follows:

First: That the defendants herein named are the owners of or claim or may claim an interest or interests in and to the real estate in this petition described, which the plaintiff seeks to condemn in and by this proceeding for the public uses hereinafter more particularly set out;

Second: That the said real estate hereinafter described is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri;

Third: That the plaintiff, the United States of America, is authorized and empowered to acquire the lands herein described by purchase, condemnation, or otherwise, and that the United States Attorney is acting under instructions from the Attorney General of the United States and at the request of the Secretary of War of the United States;

Fourth: That this is an action having for its purpose, among other things, the acquiring by condemnation and in

fee simple absolute of the land hereinafter described and the title thereto, which real estate is located as aforesaid, and is authorized and directed to be brought by the Secre-
[fol. 10] tary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257); and the Act of Congress approved July 2, 1917, USC 50:171, as amended, which authorizes the acquisition by the Secretary of War of land suitable and necessary for military purposes, and the Act of Congress approved June 26, 1940, (Public No. 667—76th Congress); and the Act of Congress approved September 24, 1940, (Publ. Ros. 99—76th Congress); which Acts appropriated funds for such purposes;

Fifth: That the project herein referred to and the matters to be performed, being an acquisition of land for military purposes for an ordnance plant and the national defense of the United States, are within the purview of the sovereign plaintiff and of the Congress of the United States and the said lands and territory to be acquired are located within the jurisdiction of this Court;

Sixth: That it is the opinion of the Secretary of War that it is necessary and advantageous to the interests of this sovereign plaintiff that the said land be acquired by condemnation under judicial process, and that the acquisition in fee simple of said lands be had forthwith; that the money has been appropriated and is available to pay for said lands;

Seventh: That the land to be condemned and the nature and extent of the interests therein of the various persons and claimants thereto as to each respective parcel is described as follows:

[fol. 11] Order 3-4-42

Amended Description
Case No. 800
Tract No. 174

A tract of land located partly within U. S. Surveys Nos. 476, 1670, and 3106, Twp. 45 N. R. 2 & 3 E., and more particularly described as follows:

Beginning at a point on the Eastern line of Survey No. 476, said point bearing S. 22° 22′ W. 2.75 chains from the N. E. corner of said Survey No. 476; thence N. 86° 58′ E. 6.92 chains to a point; thence N. 55° 03′ E. 7.56 chains to a point; thence S. 61° 39′ E. 15.27 chains to a point on the northwestern right-of-way line of State Highway No. 94; thence along said right-of-way line N. 35° 25′ E. 3.04 chains to point of curvature; thence northeastwardly along a curve of said Highway, having a radius of 7.146 chains, thru a central angle of 36° 20′ to the right, a distance of 4.53 chains to point of tangent of said right-of-way curve; thence N. 71° 45′ E. 7.40 chains to a point on said right-of-way line; thence S. 67° 12′ E. 7.67 chains to a point; thence N. 56° 17′ E. 4.92 chains to a point; thence S. 55° 27′ E. 3.00 chains to a point in the center line of the Missouri, Kansas and Texas right-of-way; thence N. 58° 15′ E. along said center line 28.16 chains to a point; thence S. 66° 36′ E. 8.97 chains to a point on the left bank of the Missouri River; thence along the left bank of said river and the property now or formerly of Mitchell Castlio the following courses and distances: S. 37° 05′ W. 6.50 chains S. 18° W. 7.10 chains and S. 24° 30′ W. 5.41 chains to the property of said Castlio; thence along said property line the following courses and distances: N. 43° W. 4.22 chains to a point; thence N. 68° 38′ W. 2.51 chains to a point; thence N. 89° 49′ W. 3.90 chains to a point; thence S. 72° 29′ W. 2.88 chains to a point; thence S. 66° 12′ W. 7.79 chains to a point; thence S. 6.2′ W. 5.02 chains to a point; thence S. 78° 30′ W. 7.63 chains to a point; thence west 5.54 chains to a point on the southeast right-of-way line of said Missouri, Kansas and Texas Railroad; thence S. 57° 30′ W. along said right-of-way line 3.56 chains to a point; thence S. 17° 30′ W. 7.82 chains to a point; thence S. 23° 30′ E. 8.56 chains to a point in the center line of Femme Osage Creek; thence along the center line of said creek the following courses and distances: N. 75° E. 2.18 chains; N. 64° E. 6.81 chains; N. 60° 45′ E. 3.84 chains; N. 59° 30′ E. 10.30 chains; N. 71° E. 2.18 chains; N. 88° E. 3.70 chains; East 2.31 chains and N. 75° E. 6.10 chains to a point at the intersection of said center line of said creek with the left bank of the Missouri River; thence along the left bank of said river S. 33° 30′ W. 26.90 chains to a point; thence N. 68° W. along the prolongation of the northern line of U. S.

Survey No. 1670, 1.08 chains to an iron bar at the northeast corner of said Survey No. 1670; thence S. 22° W. 15.98 chains to a point; thence N. 68° W. 39.25 chains to a point; thence S. 22° W. 14.37 chains to a point; thence N. 68° W. 17.24 chains to a point; thence S. 22° W. 28.72 chains to a point; thence S. 68° E. 1.39 chains to a point; thence S. 22° W. 11.11 chains to a point in the southern line of Survey No. 1670, which line is also the northern line of U. S. Survey No. 44; thence N. 68° W. along said survey line 9.10 chains; thence N. 22° 22′ E. along the western line of Survey No. 1670 and the Eastern line of Survey No. 476, 14.50 chains to a point on the right bank of the Femme Osage Creek; thence along the right bank of said creek the following courses and distances: N. 54° 16′ W. 1.74 chains; N. 34° 44′ W. 5.50 chains; N. 51° 31′ W. 1.55 chains; N. 36° 13′ W. 1.60 chains; N. 8° 51′ W. 1.15 chains; N. 13° 28′ E. 2.42 chains; N. 45° 45′ E. 1.61 chains;

[fol. 12] Tract No. 174.

(A)

Tract No. 174 containing 356.51 acres of land, more or less, situated in St. Charles County, Missouri, and more particularly described as follows:

A tract of land located partly within U. S. Surveys Nos. 476, 4670 and 3106, and more particularly described as follows: Beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains, South 22 degrees West from the northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains; thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 23.67 chains; thence North 56 degrees 17 minutes East 4.92 chains; thence South 55 degrees 27 minutes East 3 chains to a point in the center of the M. K. and T. Railroad Track; thence North 58 degrees 13 minutes East 28.16 chains along and with the center line of said Railroad track to a point; thence South 66 degrees 36 minutes East 8.88 chains more or less, to the bank of the Missouri River; thence South and westward along and with the bank of the Missouri River to a point in the extended southern line of U. S. Survey No. 3106; thence North with the southern line of Survey No. 3106,

68 degrees West 415.4 feet, more or less, to the northeast corner of survey 1670; thence South 22 degrees West 15.98 chains; thence North 68 degrees 0′ minutes West 800 feet, more or less; thence North 68 degrees West 39.25 chains; thence South 22 degrees West 14.37 chains; thence North 68 degrees West 24.95 chains; thence South 22 degrees west 28.72 chains to a stone at the southwest corner of a tract of land now or formerly belonging to the heirs of F. M. Taylor, deceased; thence South 68 degrees East 1.39 chains to a stone; thence South 22 degrees West 11.11 chains to a stone in the northern line of U. S. Survey No. 44; thence along the line between U. S. Survey No. 44 and Survey No. 1670 North 68 degrees West 9.10 chains to the southwest corner of U. S. Survey No. 1670; thence North on the line between U. S. Survey No. 476 and Survey No. 1670, 22 degrees 22 minutes East to a point on the eastern bank of the Femme Osage Creek; thence following the bank of said Femme Osage Creek to a point where same intersects the line between U. S. Survey No. 476 and Survey No. 1670; thence North 22 degrees 22 minutes East 37.44 chains, more or less, to the point of beginning;

A strip of land in U. S. Survey No. 1670, Township 45 North, Range 2 East as a right of way for road purposes described as follows: Beginning at the County Road at the northeast corner of U. S. Survey No. 44; thence extending westwardly along the line between said surveys 44 and 1670 15.04 chains to the line of the tract of land owned by Fritz Hueffmeier; thence extending northwardly 12 feet along said line; thence extending eastwardly parallel with the line between Surveys 44 and 1670 N. 61° 53′ E. 2.63 [fol. 13] chains; N. 54° 56′ E. 4.67 chains; N. 62° 15′ E., 1.88 chains; N. 54° 01′ E. 2.81 chains; N. 47° 44′ E. 1.50 chains; N. 41° 49′ E. 2.33 chains; N. 36° 42′ E. 3.73 chains and N. 47° 56′ E. 0.66 chains to a point in the western line of said Survey No. 1670; thence N. 22° 22′ E. along said survey line, 35.69 chains to the point of beginning, said tract containing 311 acres, more or less, exclusive of State Highway No. 94 and the Missouri, Kansas and Texas Railroad right-of-way and subject to all existing highways and public utility easements.

Also a 12-foot (or 0.182 chain) strip, being part of U. S. Survey No. 1670, Twp. 45 N. R. 2 E., and more particularly

described as follows: Beginning at a point in the center line of a county road, which point is also the Northeast corner of U. S. Survey No. 44; thence N. 68° W. along the north line of said Survey No. 44 and south line of U. S. Survey No. 1670, 15.85 chains to a point; thence No. 22° E. 0.182 chains to a point; thence S. 68° E. 15.85 chains to a point in the center line of said county road; thence S. 22° W. along said center line 0.182 chains to the place of beginning, containing .288 of an acre, more or less; subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 14] 15.04 chains to the County Road and thence extending southwardly 12 feet along said County Road to the place of beginning.

Excepting from the above, a tract of land described as located partly within U. S. Surveys No. 476, No. 1670 and No. 3106, and more particularly described as follows: beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains, South 22 degrees West from the Northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains, thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 35.26 chains to a point in the beginning point of the tract of land herein described; thence South 62 degrees West 5.02 chains; thence South 78 degrees 30 minutes West 6.73 chains; thence West 5.54 chains; thence South 57 degrees 30 minutes West 3.56 chains; thence South 17 degrees 30 minutes West 7.82 chains; thence South 23 degrees 30 minutes East 8.56 chains; thence North 75 degrees East 3.78 chains; thence North 64 degrees East 6.81 chains; thence North 60 degrees 45 minutes East 3.84 chains; thence North 59 degrees 30 minutes East 10.30 chains; thence North 71 degrees East 2.18 chains; thence North 88 degrees East 3.70 chains; thence East 2.31 chains; thence North 75 degrees East 5.50 chains; thence North 73 degrees East 2.21 chains; thence North 29 degrees 30 minutes East 7.58 chains; thence North 43 degrees West 5.30 chains; thence North 68 degrees 38 minutes West 2.51 chains; thence North 89 degrees 49 minutes West 3.90 chains; thence South 72 degrees 29 minutes West 2.88 chains; thence South 66 de-

grees 12 minutes West 7.79 chains; to the point of beginning, containing 50 acres, and formerly belonging to Mitchell Castlio.

Excepting also a tract of land in U. S. Survey No. 3106 Township 45 North, Ranges 2 and 3 East, more particularly described as follows: beginning at a point on the western line of said U. S. Survey No. 3106 distant 7.25 chains North 22 degrees 22 minutes East from the southwestern corner of said Survey; thence North 86 degrees 58 minutes East 6.92 chains; thence North 55 degrees 03 minutes East 7.86 chains to an iron pipe, which iron pipe marks the beginning point of the tract of land herein described; thence continuing along said line North 55 degrees 3 minutes East 14.53 chains to an iron rod; thence South 67 degrees 12 minutes East 16 chains to an iron pipe in the northwesterly right-of-way line of Missouri State Highway S. E.; thence along said right-of-way line as follows: South 71 degrees 45 minutes West 7.40 chains to a point of curvature of station 266 plus 10.1; thence southwesterdwardly along a curve having a radius of 7.146 chains through a central angle of 36 degrees 20 minutes to the left, a distance of 4.53 chains to a point of tangent at station 268 plus 89.6; thence South 35 degrees 25 minutes West 3.04 chains to an iron pipe in said right-of-way line; thence North 69 degrees 31 minutes West 15.27 chains to the place of beginning, containing 16.95 acres.

The above described land being situated in St. Charles County, Missouri, and contains 356.51 acres, more or less; subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 15] (B)

That the following defendant owns or may own or may claim to have some right, title, interest, lien or estate in, to or upon said land:

Q. W. S. S. Realty and Investment Company, a corporation

(H. H. Steed, Trustee
Order (Union Savings Bank of St. Charles
(State of Missouri
7/24/41 (Darst Bottom Drainage and Protective District
(No. 2
(Henry W. Mette

Order 4/8/42 (Willie Wackher, otherwise known as W. Wackher, otherwise known as William Wackher

(James S. Martin, if living, or if dead, then the Unknown Consort, heirs, devisees, donees, alienees, assignees and immediate, mesne or remote, voluntary or involuntary grantees of

Order 12/12/42 the said James S. Martin

(The Unknown Owner and Holder of Note for $5000.00, dated June 17, 1925, secured by Deed of Trust in Book 150, page 128, of the deed records of St. Charles County, Missouri, in favor of Union Savings Bank of St. Charles

[fol. 16] Eighth: That all of the land described in this petition is subject to liens or claims for certain taxes, and the County of St. Charles, State of Missouri, and the Collector of Revenue of St. Charles County, Missouri, are, therefore, named parties defendant herein;

Ninth: That within the boundaries of the above described tract of land are located certain roads and highways; that the defendants hereinbefore named as owners of the fee and as claiming an interest in said lands, each claim and assert, or may claim and assert a reversionary interest in and to the premises respectively so occupied as roads and highways, and which reversionary interests the plaintiff herein seeks to include and condemn in this proceeding;

Tenth: That all and singular, the heirs, husbands, wives, devisees, executors, administrators, representatives, alienees, successors and assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lienors and claimants, having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees, users, holders and owners of and claimants to easements in, on, over, across or through said lands; and all persons, firms and corporations having or claiming any title to or interest in any of said land or any part thereof, herein sought to be condemned, are made parties defendant, as hereinabove specifically named, if known, and if unknown, such unknown persons by the description of the "Unknown Owners" of the land herein

described and to be condemned, to the end that they may come into court and by proper pleadings make known their interests and claims to said lands or to the proceeds arising therefrom;

Eleventh: That your petitioner has attempted to set forth the interest or estates of all persons, firms and corporations in the lands herein mentioned as far as your petitioner has been able to ascertain the same; but, notwithstanding such statement, all persons, firms or corporations, including all unknown officers, trustees, directors and shareholders of any defunct corporations having or claiming any interest or estate in or to said land, are made parties to this proceeding generally, to the end that all of their rights, title, interests and estate, whatever it may [fol. 17] be, to all and singular, the premises above mentioned may be reached and divested out of them and vested in your petitioner, the United States of America;

Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and will make and have entered all such orders, judgments and decrees as may be necessary to bring all the known owners of said land before this Court, and to make all unknown parties having any interest therein defendants hereto, and to that end that process, summons and notice may issue for the defendants hereinbefore named, and for the order of the Court directing notice of suit, and for publication thereof to the unknown, not found and non-resident defendants herein, if any there be, all as required by law, giving them notice of the time when and the place where this petition will be heard, and for such other orders and decrees as may be proper and necessary; and that the Court will appoint three disinterested commissioners, qualified by law, to determine, assess, and award the value of the property proposed to be taken and other damages which may be sustained by the respective owners of or persons claiming an interest in and to the aforesaid property hereinbefore described and proposed to be taken; and that said commissioners will assess according to the provisions of the acts [appropos] to this proceeding and the provisions of the law applicable thereto, under which this action is brought, the special and direct benefits arising from the improvements, if any, which may be sustained by, or may accrue to, said defendants; that the Court will decree to this plaintiff the

right of judgment in condemnation herein in fee simple as contemplated by the laws of Congress in this case made applicable, and that those defendants and each of them, and all other claimants, be required to show cause on the day therein fixed why said plaintiff should not have the relief herein prayed for; that plaintiff may have judgment for condemnation of the property hereinbefore described, and that the defendants, and each of them shall be divested of all of their said right, title and interest in and to the aforesaid premises, and that the title thereto in fee simple shall be vested in this sovereign plaintiff, and that it shall have, own and control the same forever; that the Court, upon the filing of this petition, will make an order pursuant [fol. 18] to the Act of Congress approved February 26, 1931. (46 Stat. 1421), decreeing to the plaintiff the right to take immediate possession of said lands for the purposes hereinbefore described in order that the plaintiff, its servants, agents and employees, may proceed with the aforesaid project and for the purposes hereinbefore required and to permit the said plaintiff to proceed with the work of construction of said ordnance plant as contemplated by the plans of said project; that the plaintiff may have judgment against the respective premises, property or interest therein for special benefits, if any, in excess of the values and damages in each instance assessed in the premises by the aforesaid commissioners; and that this Court will make such further necessary orders in the premises as shall be just, proper, necessary and requisite to vest said lands in fee simple absolute in the United States of America, and grant to this petitioner all such other and further relief in the premises to which this petitioner may be found entitled and as the Court may deem just and proper.

THE UNITED STATES OF AMERICA,
By Harry C. Blanton,
United States Attorney for the Eastern District of Missouri,
402 New Federal Building,
St. Louis, Missouri.

M. WALKER COOPER,
Special Assistant to the United States Attorney,
410 New Federal Building,
St. Louis, Missouri.

[fol. 19] United States of America,
Eastern District of Missouri—ss.:

Before me, the undersigned, personally appeared Harry C. Blanton, United States Attorney in and for the Eastern District of Missouri, and made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief; and that this proceeding is in good faith for the purposes specified in the petition.

HARRY C. BLANTON.

Subscribed and sworn to before me, this 9th day of April, 1941.

(Seal)

JAMES J. O'CONNOR,
Clerk of U. S. District Court
in and for the Eastern District of Missouri.
By C. E. Rudolph, Deputy.

[fol. 20] Declaration of Taking.

(Filed April 7, 1941.)

In the United States District Court in and for the Eastern District of Missouri.

United States of America, Petitioner,
Case No. 770. vs.
1,710.54 Acres of Land, More or Less, Situate in St. Charles County, State of Missouri, and Vincent Lonergan, et al., Defendants.

To the Honorable,
The United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved July 2, 1917, as amended by the Act of Congress approved April 11, 1918 (50 U. S. C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act

of Congress approved June 26, 1940 (Public No. 667—76th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the site of an ordnance munitions plant and for such other uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Weldon Springs Ordnance Plant, St. Charles County, Missouri, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use. [fol. 21] 2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of the same lands described in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto, subject, however, to all existing rights for easements for public roads, pipe lines and public utilities, in, across and over the lands acquired.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 3rd day of April, A. D. 1941, in the City of Washington, District of Columbia.

HENRY L. STIMSON,
Secretary of War of the United States.

[fol. 22] Schedule "A"

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregate 1,710.54 acres, more or less, situate and being in the County of St. Charles, State of Missouri. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

[fol. 23] Tract No. 174.

A tract of land located partly within U. S. Surveys Nos. 476, 1670 and 3106, and more particularly described as follows: Beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains, South 22 degrees West from the northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains; thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 23.67 chains; thence North 56 degrees 17 minutes East 4.92 chains; thence South 55 degrees 27 minutes East 3 chains to a point in the center of the M. K. and T. Railroad Track; thence North 58 degrees 13 minutes East 28.16 chains along and with the center line of said Railroad track to a point; thence South 66 degrees 36 minutes East 8.88 chains more or less, to the bank of the Missouri River; thence South and westward along and with the bank of the Missouri River to a point in the extended southern line of U. S. Survey No. 3106; thence North with the southern line of Survey No. 3106, 68 degrees West 415.4 feet, more or less, to the northeast corner of survey 1670; thence South 22 degrees West 15.98 chains; thence North 68 degree 0 minutes West 800 feet, more or less; thence North 68 degrees West 39.25 chains; thence South 22 degrees West 14.37 chains; thence North 68 degrees West 24.95 chains; thence South 22 degrees west 28.72 chains to a stone at the southwest corner of a tract of land now or formerly belonging to the heirs of F. M. Taylor, deceased; thence South 68 degrees East 1.39 chains to a stone; thence South 22 degrees West 11.11 chains to a stone in the northern line of U. S. Survey No. 44; thence along the line between U. S. Survey No.

44 and Survey No. 1670 North 68 degrees West 9.10 chains to the southwest corner of U. S. Survey No. 1670; thence North on the line between U. S. Survey No. 476 and Survey No. 1670, 22 degrees 22 minutes East to a point on the eastern bank of the Femme Osage Creek; thence following the bank of said Femme Osage Creek to a point where same intersects the line between U. S. Survey No. 476 and Survey No. 1670; thence North 22 degrees 22 minutes East 37.44 chains, more or less, to the point of beginning;

A strip of land in U. S. Survey No. 1670, Township 45 North, Range 2 East as a right of way for road purposes described as follows: beginning at the County Road at the northeast corner of U. S. Survey No. 44; thence extending westwardly along the line between said surveys 44 and 1670 15.04 chains to the line of the tract of land owned by Fritz Hueffmeier; thence extending northwardly 12 feet along said line; thence extending eastwardly parallel with the line between Surveys 44 and 1670 15.04 chains [fol. 24] to the County Road and thence extending southwardly 12 feet along said County Road to the place of beginning.

Excepting from the above, a tract of land described as located partly within U. S. Surveys No. 476, No. 1670 and No. 3106, and more particularly described as follows: beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains, South 22 degrees West from the Northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains, thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 35.26 chains to a point in the beginning point of the tract of land herein described; thence South 62 degrees West 5.02 chains; thence South 78 degrees 30 minutes West 6.73 chains; thence West 5.54 chains, thence South 57 degrees 30 minutes West 3.56 chains; thence South 17 degrees 30 minutes West 7.82 chains; thence South 23 degrees 30 minutes East 8.56 chains; thence North 75 degrees East 3.78 chains; thence North 64 degrees East 6.81 chains; thence North 60 degrees 45 minutes East 3.84 chains; thence

North 59 degrees 30 minutes East 10.30 chains; thence North 71 degrees East 2.18 chains; thence North 88 degrees East 3.70 chains; thence East 2.31 chains; thence North 75 degrees East 5.50 chains; thence North 73 degrees East 2.21 chains; thence North 29 degrees 30 minutes East 7.58 chains; thence North 43 degrees West 5.30 chains; thence North 68 degrees 38 minutes West 2.51 chains; thence North 89 degrees 49 minutes West 3.90 chains; thence South 72 degrees 29 minutes west 2.88 chains; thence South 66 degrees 12 minutes West 7.79 chains; to the point of beginning, containing 50 acres, and formerly belonging to Mitchell Castlio.

Excepting also a tract of land in U. S. Survey No. 3106 Township 45 North, Ranges 2 and 3 East, more particularly described as follows: beginning at a point on the western line of said U. S. Survey No. 3106 distant 7.25 chains North 22 degrees 22 minutes East from the southwestern corner of said Survey; thence North 86 degrees 58 minutes East 6.92 chains; thence North 55 degrees 03 minutes East 7.86 chains to an iron pipe, which iron pipe marks the beginning point of the tract of land herein described; thence continuing along said line North 55 degrees 3 minutes East 14.53 chains to an iron rod; thence South 67 degrees 12 minutes East 16 chains to an iron pipe in the northwesterly right-of-way line of Missouri State Highway S. E.,; thence along said right-of-way line as follows: South 71 degrees 45 minutes West 7.40 chains to a point of curvature of station 266 plus 10.1; thence southwestwardly along a curve having a radius of 7.146 chains through a central angle of 36 degrees 20 minutes to the left, a distance of 4.53 chains to a point of tangent at station 268 plus 89.6; thence South 35 degrees 25 minutes West 3.04 chains to an iron pipe in said right-of-way line; thence North 69 degrees 31 minutes West 15.27 chains to the place of beginning, containing 16.95 acres.

The above described land being situated in St. Charles County, Missouri, and contains 356.61 acres, more or less.

Name of Purported Owner: Q. W. S. S. Realty and Investment Co.

Estimated Compensation: $15,280.00.

[fol. 25] Order and Judgment on Declaration of Taking.

(Filed April 9, 1941.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 800. vs. At Law.
356.61 Acres of Land, More or Less, Situate in St. Charles County, State of Missouri, Known as Tract No. 174 and Q. W. S. S. Realty and Investment Company, a corporation, et al., Defendants.

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter a judgment herein on the Declaration of Taking filed in Case No. 770 on April 7, 1941, and upon consideration of said motion, and the condemnation petition filed herein, and the Declaration of Taking filed in said Cause No. 770. the Court, having heard arguments of counsel and being fully advised in the premises, finds:

First: That a petition in condemnation was duly filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the land described in said petition, and also under authority of the Attorney General of the United States:

Second: That said Petition filed herein and the Declaration of Taking heretofore filed in Cause No. 770 state the authority under which, and the public use for which, said land was taken; that said Declaration of Taking was signed by the Secretary of War of the United States, who was, and is, duly authorized and empowered by law to acquire the land described in said petition for, on behalf of and in the name of the United States of America, for the purposes therein set forth;

[fol. 26] Third: That a proper description of the land taken, sufficient for identification thereof, is set out in the said Declaration of Taking;

Fourth: That the said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use:

Fifth. That a map or plan showing the land taken is annexed to and made a part of the said Declaration of Taking;

Sixth: That a statement is contained in the said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for Tract No. 174, in the amount of Fifteen Thousand Two Hundred Eighty Dollars and No Cents ($15,280.00) and that said sum was deposited in the Registry of this Court in Case No. 770 to the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking:

Seventh. That a statement is contained in the said Declaration of Taking that the amount of the ultimate award of compensation for Tract No. 174, for the taking of said property, in the opinion of the Secretary of War of the United States, probably will be within any limits prescribed by Congress on the prices to be paid therefor,

It Is Therefore Ordered and Adjudged that the title to said land in fee simple absolute, vested in the United States of America upon the filing of the said Declaration of Taking and depositing in the Registry of this Court of the aforesaid estimated compensation, which land is situated in St. Charles County, Missouri, and described as follows:

[fol. 27] Tract No. 174.

Tract No. 174 containing 356.51 acres of land, more or less, situated in St. Charles County, Missouri, and more particularly described as follows:

A tract of land located partly within U. S. Surveys Nos. 476, 1670 and 3106, and more particularly described as follows: Beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains, South 22 degrees West from the northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains; thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 23.67

chains; thence North 56 degrees 17 minutes East 4.92 chains; thence South 55 degrees 27 minutes East 3 chains to a point in the center of the M. K. and T. Railroad Track; thence North 58 degrees 13 minutes East 28.16 chains along and with the center line of said Railroad track to a point; thence South 66 degrees 36 minutes East 8.88 chains more or less, to the bank of the Missouri River; thence South and westward along and with the bank of the Missouri River to a point in the extended southern line of U. S. Survey No. 3106; thence North with the southern line of Survey No. 3106, 68 degrees West 415.4 feet, more or less, to the northeast corner of survey 1670; thence south 22 degrees West 15.98 chains; thence North 68 degrees 0 minutes West 800 feet, more or less; thence North 68 degrees West 39.25 chains; thence South 22 degrees West 14.37 chains; thence North 68 degrees West 24.95 chains; thence South 22 degrees west 28.72 chains to a stone at the southwest corner of a tract of land now or formerly belonging to the heirs of F. M. Taylor, deceased; thence South 68 degrees East 1.39 chains to a stone; thence South 22 degrees West 11.11 chains to a stone in the northern line of U. S. Survey No. 44; thence along the line between U. S. Survey No. 44 and Survey No. 1670 North 68 degrees West 9.10 chains to the southwest corner of U. S. Survey No. 1670; thence North on the line between U. S. Survey No. 476 and Survey No. 1670, 22 degrees minutes East to a point on the eastern bank of the Femme Osage Creek; thence following the bank of said Femme Osage Creek to a point where same intersects the line between U. S. Survey No. 476 and Survey No. 1670; thence North 22 degrees 22 minutes East 87.44 chains, more or less, to the point of beginning;

A strip of land in U. S. Survey No. 1670, Township 45 North, Range 2 East as a right of way for road purposes described as follows: beginning at the County Road at the northeast corner of U. S. Survey No. 44; thence extending westwardly along the line between said surveys 44 and 1670 15.04 chains to the line of the tract of land owned by Fritz Hueffmeier; thence extending northwardly 12 feet along said line; thence extending eastwardly parallel

with the line between Surveys 44 and 1670 15.04 chains [fol. 28] to the County Road, and thence extending southwardly 12 feet along said County Road to the place of beginning.

Excepting from the above, a tract of land described as located partly within U. S. Surveys No. 476, No. 1670 and No. 3106, and more particularly described as follows: beginning at the corner in the line between U. S. Survey No. 476 and Survey No. 3106, at a distance of 2.75 chains South 22 degrees West from the Northeast corner of said Survey No. 476, running thence from said beginning point North 86 degrees 58 minutes East 6.92 chains, thence North 55 degrees 3 minutes East 22.39 chains; thence South 67 degrees 12 minutes East 35.26 chains to a point in the beginning point of the tract of land herein described; thence South 62 degrees West 5.02 chains; thence South 78 degrees 30 minutes West 6.73 chains; thence West 5.54 chains; thence South 57 degrees 30 minutes West 3.56 chains; thence South 17 degrees 30 minutes West 7.82 chains; thence South 23 degrees 30 minutes East 8.56 chains; thence North 75 degrees East 3.78 chains; thence North 64 degrees East 6.81 chains; thence North 60 degrees 45 minutes East 3.84 chains; thence North 59 degrees 30 minutes East 10.30 chains; thence North 71 degrees East 2.18 chains; thence North 88 degrees East 3.70 chains; thence East 2.31 chains; thence North 75 degrees East 5.50 chains; thence North 73 degrees East 2.21 chains; thence North 29 degrees 30 minutes East 7.58 chains; thence North 43 degrees West 5.30 chains; thence North 68 degrees 38 minutes West 2.51 chains; thence North 89 degrees 49 minutes West 3.90 chains; thence South 72 degrees 29 minutes west 2.88 chains; thence South 66 degrees 12 minutes West 7.79 chains; to the point of beginning, containing 50 acres, and formerly belonging to Mitchell Castlio.

Excepting also a tract of land in U. S. Survey No. 3106 Township 45 North, Ranges 2 and 3 East, more particularly described as follows: beginning at a point on the western line of said U. S. Survey No. 3106 distant 7.25 chains North 22 degrees 22 minutes East from the southwestern corner of said Survey; thence North 86 degrees 58 minutes

East 6.92 chains; thence North 55 degrees 03 minutes East 7.86 chains to an iron pipe; which iron pipe marks the beginning point of the tract of land herein described; thence continuing along said line North 55 degrees 3 minutes East 14.53 chains to an iron rod; thence South 67 degrees 12 minutes East 16 chains to an iron pipe in the northwesterly right-of-way line of Missouri State Highway S. E.; thence along said right-of-way line as follows: South 71 degrees 45 minutes West 7.40 chains to a point of curvature of station 266 plus 10.1; thence southwestwardly along a curve having a radius of 7.146 chains through a central angle of 36 degrees 20 minutes to the left, a distance of 4.53 chains to a point of tangent at station 268 plus 89.6; thence South 35 degrees 25 minutes West 3.04 chains to an iron pipe in said right-of-way line; thence North 69 degrees 31 minutes West 15.27 chains to the place of beginning, containing 16.95 acres.

The above described land being situated in St. Charles County, Missouri, and contains 356.51 acres, more or less; subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 29] that said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding, shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law, and

It Is Further Ordered and Adjudged that the possession of said lands shall be immediately surrendered to the United States of America.

This cause is held open for the entry of such other and further orders and judgments as may be just and equitable in the premises.

Entered on this 9th day of April, 1941.

CHARLES B. DAVIS,
United States District Judge.

[fol. 30] Order Transferring Fund From the Declaration of Taking in Case No. 770.

(Filed April 9, 1941.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 800. vs. At Law.
Tract No. 174.

356.51 acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty and Investment Company, a Corporation, et al., Defendants.

It appearing to the Court that in the Declaration of Taking filed with Case No. 770 on April 7th, 1941, there was paid into the Registry of the Court as estimated compensation for Tract No. 174, described in the petition filed herein, the amount of $15,280,00;

On oral motion of the United States Attorney, the Clerk of this Court is directed to transfer $15,280.00, of the whole amount deposited under the Declaration of Taking heretofore filed, to this cause for the use and benefit of the defendants entitled thereto as to Tract No. 174.

CHARLES B. DAVIS,
United States District Judge.

Dated, this 9th day of April, 1941.

[fol. 31] (Answer of Defendant, Q. W. S. S. Realty and Investment Company.)

(Filed May 19, 1941.)

Comes now Q. W. S. S. Realty and Investment Company, a corporation, defendant in the above entitled cause, by its attorneys, and, in answer to the petition of the plaintiff herein, denies each and every allegation therein contained.

Answering further, the said defendant states that because of the hereinafter stated possession and ownership in fee simple by the plaintiff of the land described in the said petition, the said land was removed entirely and permanently from the buying market prior to the filing of the

plaintiff's petition herein; that the said land at the date of such filing thus neither had, nor could have had, a reasonable value on the buying market; that the absence of such reasonable value renders impossible the ascertainment thereby of the amount of just compensation for the said land; that there is an utter absence of any precedent in the light of which the amount of such compensation may be determined; that such amount is impossible of ascertainment and, therefore, cannot be paid into the Reg- [fol. 32] istry of this Court; and that thus the prime requisite of this proceeding and of its alleged Declaration of Taking utterly fails.

Answering further, the said defendant states as follows, to-wit:

1. That the plaintiff's petition is inconsistent within itself in that it provides for the condemnation of the said land under Title 40, Section 257 of the United States Code, and under Title 50, Section 171 of the United States Code.

2. That Title 40, Section 257, United States Code, does not provide for the condemnation of land for an ordnance plant as set out in the plaintiff's petition.

3. That the plaintiff, under Title 50, Section 171, United States Code, has entered with the defendant into a valid contract which provides for the sale of the same land as that described in the said petition and which was duly accepted by and on behalf of the plaintiff by its duly authorized agent, which said contract, omitting the signatures thereto, is in words and figures as follows, to-wit:

W 766 QM
2870

Option to Purchase Land.

Know All Men By These Presents: That the undersigned Q-W-S-S Realty and Investment Co., for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is hereby acknowledged, hereby agrees for their heirs, executors and assigns, to sell and convey to the Government for the consideration of Fifty-two Thousand Dollars ($52,000.00) that certain piece or

parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

1st. A tract of land lying on the North side of Femme Osage Creek, being part of surveys 3106 and 1670 described as follows, to-wit:—Beginning at the corner in the line between U. S. Surveys Nos. 476 and 3106 at a distance of 2.75 chains south 22 degrees West from the Northeast corner of said survey 476, running thence from said beginning point, North 22 degrees East 6.74 chains to a hickory 10 inches in diameter for corner, thence North 54½ degrees East 22.11 chains to a stake for corner, thence south [fol. 33] 68 degrees East 36 chains to a stake for corner in the middle of what was at one time the old channel of Femme Osage Creek; thence with old Channel of said Creek south 62 degrees West 5 chains, south 72½ degrees West 5.30 chains, south 82 degrees West 6.56 chains, south 74 degrees West 5.25 chains, south 21 degrees West 7.81 chains to the foot of an old bank of the Missouri River; thence following down the foot of said bank North 71 degrees East 13.04 chains, North 84 degrees East 10.61 chains and south 80 degrees East 4.00 chains to the present mouth of the Femme Osage Creek; thence following the meanders of said creek south 68 degrees West 7.60 chains, south 66 degrees West 17.81 chains, south 75½ degrees west 8.80 chains, West 8.57 chains, thence south 84 degrees West 14.39 chains, south 82 degrees West 4.67 chains, south 70 degrees West 3.04 chains, South 49 degrees West 4.13 chains, south 63 degrees West 3.08 chains, south 81 degrees West 8.42 chains to the East line of survey 476; thence with the east line North 22 degrees East 34 chains to the place of beginning, containing one hundred fifty-two (152) acres more or less, exclusive of the right of way of the Missouri-Kansas-and-Texas Railway; all according to a survey made by Carr Edwards former County Surveyor of St. Charles County in January, 1908 and being part of survey 3106 and parts of lots 3 and 4 of the partition among the heirs of Wm. Hays deceased, said lots 3 and 4 being parts of survey 1670, excepting from the above tract 16.95 acres conveyed to Thomas H. Rogers and wife as per deed recorded in the Recorder's Office of St. Charles County, Missouri, in Book 181 page 349 and excepting also from the above described real estate that land which

was conveyed to the State of Missouri for right-of-way purposes and subject to public roadways as now maintained and established.

2nd. Also another tract of land being part of Surveys Nos. 1670, 3106 and 476 in township 45 North Range 2 and 3 East bounded and more particularly described as follows: beginning at the Northwest corner of a tract of land belonging to Fred Hueffmeyer; thence along the North line of the farms of said Hueffmeyer and F. M. Taylor, South 68 degrees East 24.75 chains to corner; thence N. 22 degrees E. 14.20 chains to corner, thence S. 68 degrees E. 39.25 chains to corner; thence North 22 degrees East 15.98 chains to corner; thence South 68 degrees East 9.21 chains to corner on the bank of the Missouri River; thence down said stream North 26 degrees East 7.17 chains to corner; thence North 17¼ degrees East 14.50 chains to corner at mouth of Femme Osage Creek; [fol. 34] thence up center of said creek as follows: North 74 degrees W. 9.52 chains to corner, thence south 68 degrees West 7.60 chains to corner; thence South 68 degrees West 17.81 chains to corner; thence south 75½ degrees West 8.80 chains to corner; thence west 8.57 chains to corner 84 degrees West 14.39 chains to corner thence south 82 degrees West 4.67 chains to corner thence south 70 degrees West 3.04 chains to corner; thence south 49 degrees West 4.13 chains to corner; thence South 63 degrees West 3.08 chains to corner; thence south 81 degrees West 8.42 chains to corner; thence South 73 degrees West 2.97 chains to corner; thence South 37 degrees West 1.03 chains to corner thence south 26 degrees West 4.46 chains to corner; thence South 46 degrees West 4.41 chains to corner; thence South 66 degrees W. 8.58 chains to corner; thence South 38 degrees West 2.94 chains to corner; thence south 11 degrees West 2.34 chains to corner; thence south 11 degrees East 1.94 chains to thence south 27 degrees East 1.40 chains to corner; thence south 37 degrees East 2.99 chains to corner; thence south 38 degrees East 3.49 chains to corner; thence south 15 degrees East 4.47 chains to corner; thence South 23 degrees East 1.85 chains to last corner in said Femme Osage Creek; thence leaving said Creek North 22 degrees East 30 chains to the place of beginning, containing one hundred forty-eight and 73/100 (148.73) acres

more or less. Said above described real estate being the same real estate that was conveyed to A. W. Schaefer, et al. by Mathilda Lowe and Fred Lowe, her husband by Warranty Deed recorded in book 144 page 187 of Recorder's Office of St. Charles County, Missouri.

A tract of land in U. S. Survey No. 1670, township 45 North Range 2 East being parts of Lots Nos. 1 and 2 of the partition among the heirs of Wm. Hays, deceased and more particularly described as follows:—Beginning at a stone at the southwest corner of said U. S. Survey No. 1670; thence along the line between U. S. Survey No. 476 and said U. S. Survey No. 1670 North 22 degrees East 39.83 chains to a corner; thence south 68 degrees East 7.71 chains to a stone, thence South 22 degrees West 28.72 chains to a stone at the Southwest corner of a tract of land now or formerly belonging to the heirs of F. M. Taylor, deceased, thence south 68 degrees East 1.39 chains to a stone; thence South 22 degrees West 11.11 chains to a stone in the Northern line of U. S. Survey No. 44; thence along the line between said U. S. Survey No. 44 and Survey No. 1670 North 68 degrees West 9.10 chains to the place of beginning, containing 31.75 acres, more or less.

4th. Also a right of way over the land now or formerly [fol. 35] owned by William G. Sander, conveyed by said William G. Sander and wife to Fritz Hueffmeier by deed dated Sept. 20, 1913 and recorded in Book 93, page 540 of said recorder's office and more particularly described as follows:—A strip of land in U. S. Survey No. 1670, Township 45 North Range 2 East as a right of way for road purposes describing as follows: Beginning at the County road at the Northeast corner of U. S. Survey No. 44; thence extending westwardly along the line between said Surveys 44 and 1670, 15.04 chains to the line of the tract of land owned by Fritz Hueffmeier; thence extending Northwardly 12 feet along said line; thence extending eastwardly parallel with the line between survey 44 and 1670, 15.04 chains to the County road and thence extending southwardly 12 feet along said County road to the place of beginning, being the same real estate described in Book 144, page 257 of the Recorder's Office of St. Charles County, Missouri.

5th. A tract of land situated in U. S. Survey No. 3106, township 45 North Range 3 East more particularly de-

scribed as follows:—Beginning at a stake on the Femme Osage Creek from which a point on the Western line of said U. S. Survey No. 3106 distant 28.19 chains south 22 degrees 0′ West from the Northwestern corner of said U. S. Survey bears North 66 degrees 56′ West 73.42 chains; thence North 66 degrees 56′ West 8.88 chains to a point in the center line of the main track of the Missouri-Kansas-Texas Railroad; thence along the center line of said railroad track south 58 degrees 15′ West 19.91 chains to point in the Northern line of a tract of land owned by J. W. and A. W. Hiler, thence along said line south 67 degrees 12′ East 11.53 chains to a stake; thence south 32 degrees 28′ West 1.19 chains to a stake in the old bed of Femme Osage Creek; thence along said Creek Bed South 68 degrees 38′ East 2.51 chains; south 4 degrees 14′ West 5.89 chains, south 52 degrees 13′ East 2.59 chains to a stake on the present bank of said Femme Osage Creek; thence in a northerly direction along the present bank of said Femme Osage Creek to the place of beginning. Subject however to the right of way of said Missouri-Kansas-Texas Railroad 50 feet wide embraced in the above description and containing 26.50 acres, more or less exclusive of said right of way. Said above land is in accordance with a survey made by Fred R. Jacoby County Surveyor on September 27, 1926 about 16 acres of said land is [hight] bottom land and the rest is land by accretion. Said real estate being the same property conveyed to Arthur W. Schaefer et al. by Margaret A. Musehany, a widow et al. by Warranty Deed in the Recorder's Office of St. Charles County, Missouri in Book 153, page 376.

[fol. 36] 6th. A tract of land situated in U. S. Survey 3106, township 45 North, Range 3 East, more particularly described as follows:—Beginning at a point on the edge of a bluff in the northern line of a tract conveyed by Mathilda Lowe and Fred Lowe to A. W. Schaefer, R. H. Seib, Wm. Wackher and Charles W. Quint, by deed recorded in the Recorder's Office of St. Charles County, Missouri, in Book 144 page 187 from which point an iron rod bears North 67 degrees 12′ West 7 links and which point is distant 3.17 chains north 67 degrees 12′ West from the center line of the main track of the Missouri-Kansas and Texas Railroad; thence South 67 degrees 12′ East 11.59 chains to an iron rod in the old bed of the Femme Osage Creek from which a

Cotton wood 12 inches in diameter bears North 47 degrees 45′ West 25.7 feet and a cotton wood 30 inches in diameter bears South 88 degrees 0′ West 27.2 feet; thence along said Creek bed North 66 degrees 12′ East 7.79 chains, North 72 degrees 29′ East 2.88 chains south 89 degrees 49′ East 3.90 chains; thence leaving said creek bed, North 32 degrees 28′ East 1.19 chains to a stake, thence North 67 degrees 12′ West 15.70 chains to a point on the bluff; thence south 58 degrees 15′ West 12.54 chains to the place of beginning, subject, however, to right of way of said Missouri-Kansas-Texas Railroad 100 feet wide, and containing 12.81 acres, exclusive of said right of way, and being the same real estate conveyed to Arthur W. Schaefer et al. by J. Warren Hiler et al. by deed recorded in the Recorder's Office of St. Charles County, Missouri in Book 153 page 375, excepting therefrom a parcel of land containing 1.48 acres conveyed by Arthur W. Schaefer et al. to Currier Fridley by deed dated September 1, 1931, and recorded in the Recorder's Office of St. Charles County, Missouri, in Book 148, page 506.

7th. A strip of ground off of the Western end of a 30 acre tract of land described in a deed from Louis D. Dozier and wife et al. to Mitchel Castlio, dated Oct. 20, 1891 and recorded in the Recorder's Office of St. Charles County, Missouri in Book 56 page 378, more particularly described as follows: to-wit:—All that part of said 30 acre tract of land and of any accretion thereto lying Westwardly of the division line agreed upon as the dividing line between the lands of Quint, Wackher, Schaefer and Seib and the land of said Mitchell Castlio in U. S. Survey No. 3106, township 45 North, Range 2 East as per agreement dated June 10th, 1929 and recorded in the Recorder's Office of St. Charles County, Missouri in Book 163, page 314. Also any and all lands formed by accretion of the Missouri River northwardly of the middle of the former, old bed of Femme Osage Creek and eastwardly and Northwardly of a Quadrilateral tract of land containing 1.67 acres conveyed by Quint, Wachker, Schaefer and Seib to Mitchell Castlio by deed dated June 10, 1929 and recorded in the Recorder's Office of St. Charles County, Missouri in Book 163, page 314, to [fol. 37] any lands in U. S. Survey Nos. 1670 and 3106 Eastwardly of the Missouri Kansas and Texas Railroad,

save and excepting any accretions embraced within the said quadrilateral tract of 1.67 acres above referred to.

8th. An easement of a right of way as a means of passage between the lands of Quint, Wackher, Schaefer and Seib, lying southwardly of the 30 acre tract of land conveyed to Mitchell Castlio by Louis D. Dozier et al., and their lands lying Northwardly of said tract of land, said right of way being one rod wide, ½ of one rod on either side of the following described center line thereof; Beginning at a point on the division line between the lands of Quint, Wackher, Schaefer and Seib and Mitchell Castlio by agreement hereinabove referred to recorded in the Recorder's Office of St. Charles County, Missouri in Book 163 page 314, in survey No. 3106 at a distance of 1.66 chains S. 17½ degrees W. from its intersection with the south line of the right of way of the M. K. and T. Railroad and from which beginning point a cotton-wood tree 24" in diameter bears N. 15½ degrees E. distant 79 links and is further described as being N. 17½ degrees E. 6.16 chains from the terminus of a road, granted by Quint, Wackher, Schaefer and Seib to Mitchell Castlio, thence over said Castlio's land as follows: N. 40¾ degrees E. 84 links N. 57½ degrees E. 1.00 chain N. 75 degrees E. 6.37 chains N. 83¼ degrees E. 3.00 chains N. 10 degrees E. 1.00 chain to the middle line of the old bed of Femme Osage Creek at which point said road way abuts against the lands of Quint et al. lying to the North of the said old creek bed and which right of way is hereby granted to said Quint, Wackher, Schaefer and Seib as and to continue as an appurtenant to the land of said Quint, Wackher, Schaefer and Seib in U. S. Survey 3106 lying northward of said tract of land conveyed by Louis D. Dozier et al. to Mitchell Castlio and Easterly of the Missouri, Kansas and Texas Railroad for the passage of said Quint, Wackher, Schaefer and Seib, their heirs and assigns, including tenants and their servants, employees, livestock, tractors, vehicles, conveyances, machinery, crops and property to and from their lands in U. S. Survey No. 3106 in connection with the cultivation, use and occupancy thereof. Subject to the rights and privileges of Mitchell Castlio, his heirs and assigns to use said right of way as means of ingress and egress to their lands and the right to work, repair and improve said right of way on the part of Mitchell Castlio, his heirs and assigns.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a com-
[fol. 38] mission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned, the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company showing title to be good and marketable as vested in the United States of America, free of all liens and encumbrances. In the event the title shall be unmerchantable, the undersigned agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of America, the agreed purchase price above mentioned will be paid by the Government to the undersigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said prop-

erty is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at St. Charles, Mo., this 25th day of November, 1940.

(Seal)

(Signed) Q-W-S-S REALTY AND INVESTMENT CO.
(Signed) A. W. Schaefer, President
Witness: (Signed) H. H. Seib, Secretary
(Signed) W. Wackher,
Member of Board of Directors

(Signed) D. M. Bolton
(Signed) D. M. Bolton
(Signed) D. M. Bolton

[fol. 39] Accepted by and on behalf of the United States of America this 30th day of November, 1940.

(Signed) R. D. VALLIANT,
Colonel, Q.M.C., United States Army.

4. That pursuant to the said contract the defendant granted possession of the said land to the plaintiff, and the plaintiff entered upon and took sole and complete possession thereof to the exclusion of the defendant, which possession has been continuous and still continues.

5. That pursuant to the said contract, the defendant caused a certificate of title to said land to be furnished the plaintiff.

6. That pursuant to the said contract the defendant executed a warranty deed conveying the said land to the plaintiff and delivered the said deed to the plaintiff through its duly authorized agent, and is ready and willing to record

the said deed and to furnish the plaintiff the final certificate of title referred to in the said contract.

7. That the plaintiff, by taking under the said contract the title to and the possession of the said land, has estopped itself from denying the validity of the said contract.

8. That the plaintiff, by entering into the said contract and by estopping itself from denying the validity thereof, is precluded from availing itself of condemnation under the said Title 50, Section 17, United States Code, except under the contingency, specified in the said contract, of non-approval by the Attorney General of the title to the said land, a contingency whereon the instant proceeding is not predicated.

[fol. 40] 9. That the instant proceeding and the alleged Declaration of Taking thereunder are unnecessary, unwarranted, illegal and void in view of the said possession of plaintiff and of the said delivery of warranty deed by the defendant to the plaintiff, under the said contract.

10. That the plaintiff has failed and refused to pay the defendant the price which it agreed to pay under the said contract.

11. That the defendant is deprived of the said agreed compensation for its property without due process of law and equal protection of the laws in violation of Section 1, Article XIV of the Constitution of the United States, and is deprived of said agreed compensation for its property without due process of law in violation of Section 30, Article II of the Constitution of the State of Missouri.

Answering further, the defendant states that the Order and Judgment heretofore made herein on the plaintiff's alleged Declaration of Taking is an improper Order and Judgment and should be vacated and set aside by the Court for the following reasons:

1. That the said alleged Declaration of Taking heretofore entered herein, if entered under Title 40, Section 258-a, United States Code, is illegal and void in that the said Section 257 does not provide for the condemnation of land for an ordnance plant referred to in the said petition.

2. That the said alleged Declaration of Taking, if entered under Title 50, Section 171, United States Code, is illegal and void in that the plaintiff has made no showing that the said land is acquired or is being acquired "in time of war, or the imminence thereof".

3. That the said Order and Judgment is illegal and void for the reasons that fee simple title to the said land was [fol. 41] prior thereto and now is vested in the plaintiff, and that the plaintiff took, prior to the said Order and Judgment, has held continuously, and now holds possession of the said land to the exclusion of the said defendant.

4. That the said alleged Declaration of Taking is predicated solely and entirely on the erroneously conceived and filed petition of the plaintiff, and is, therefore, illegal and void.

5. That the said alleged Declaration of Taking is null and void for the reasons hereinbefore fully set forth in the second paragraph, beginning on page 1, of this Answer.

Wherefore, defendant prays that this Court vacate and set aside its said Order and Judgment on the said alleged Declaration of Taking, deny the plaintiff's petition for condemnation of the said land for the uses and purposes set forth in the said petition, and discharge the said defendant with its costs.

SAMUEL M. WATSON,
OLIVER T. JOHNSON,
Attorneys for Defendant.

[fol. 42] Motion For Judgment For Plaintiff In Condemnation And For Defendants Fixing Compensation By Option.

(Filed March 20, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for defendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest, and as reasons for said motion states:

(1) That this suit was filed by plaintiff to acquire, by condemnation, the real estate described in the petition filed in this cause, that a Declaration of Taking was filed and the sum of $15,280.00 was deposited in the Registry of the Court as the estimated just compensation for said real estate;

(2) That prior to the filing of the petition in this cause the defendants and the plaintiff, through the War Department, had executed an option contract for the purchase by the United States of America from the defendants the said real estate for the sum of $52,000.00, being the amount of compensation fixed in said option contract;

(3) The United State Supreme Court in the case of Muschany vs. United States, 89 L. Ed. Adv. Op. 492 (1945) has held an option contract to be valid and binding, which option contract is identical with the provisions of the option [fol. 43] contract in this case with the exception of the names of the owners, the description of the property and the amount of compensation;

(4) That the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands described in plaintiff's petition for the purposes therein defined and against the defendants named in this cause, and against each and all of them, jointly and severally, as their rights may appear, and that the defendants, and each and all of them, jointly and severally are entitled to compensation in solido in the sum of $52,000.00, without interest, being the full amount of the compensation mentioned in said option contract;

(5) That R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, under the terms and conditions of the said option contract, have, or may have, some right, title or interest in and to the said sum of $52,000.00 mentioned in said option contract.

Wherefore, plaintiff moves the Court to enter judgment in this cause for the condemnation of the said real estate, fixing the compensation to be paid by plaintiff to the defendants in the sum of $52,000.00, and directing plaintiff to pay into the Registry of the Court the deficiency of $36,720.00 and to make an order citing all persons and corpora-

tions, including the said R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, claiming an interest in the said fund to appear in this Court and to set up and file their claims therefor.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney

Dated this 20th day of March, 1945.

[fol. 44] Order Setting Motion For Judgment For Plaintiff In Condemnation And For Defendants Fixing Compensation By Option For Hearing.

(Filed March 20, 1945.)

On oral motion of the plaintiff, by its attorneys, it is Ordered by the Court that the Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option filed by plaintiff in this cause be and the same is hereby set for hearing on the 4th day of April, 1945;

It is further Ordered that the Order of Continuance entered in this cause on the 3rd day of February, 1945, continuing this cause to June 4, 1945 be and the same is hereby set aside;

And it is further Ordered that the plaintiff give notice of the date fixed for the hearing of said motion to all defendants in this cause and to their attorneys of record by mailing to each of said defendants, whose places of residence are known, and their attorneys and to R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option and a copy of this order, and by posting in the office of the Clerk of this Court in the City of St. Louis, Missouri a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option, together with a copy of this order, at least ten

days before the time fixed in this order for the hearing of said motion.

R. M. DUNCAN,
United States District Judge.

Dated this 20th day of March, 1945.

[fol. 45] (Amended Answer of Defendant Q. W. S. S. Realty and Investment Co.)

(Filed April 2, 1945.)

Comes now Q. W. S. S. Realty and Investment Company, a corporation, defendant in the above entitled cause, by its attorney, and in this its Amended Answer, filed by leave of Court, to the petition of plaintiff herein, consents to the condemnation of the land described in plaintiff's said petition.

Answering further, the said defendant states as follows, to-wit:

1. That prior to the filing of the within suit plaintiff, under Title 50, Section 171, U. S. Code, entered with the defendant into a contract which provides for the sale of the same land as that described in said petition and which was duly accepted by and on behalf of the plaintiff by its duly authorized agent on, to-wit, the 30th day of November, 1940, a copy of which, marked "Exhibit A", is attached hereto and made a part hereof.

2. That pursuant to said contract, the defendant granted possession of the said land to plaintiff on the 30th day of November, 1940, and plaintiff, having theretofore entered [fol. 46] upon and taken possession of said land, thereafter remained and yet remains in exclusive and undisputed possession thereof.

3. That pursuant to the said contract, the defendant caused a certificate of title to the said land to be furnished the plaintiff and delivered a warranty deed conveying said land to the plaintiff through The Kansas City Title Insurance Company, plaintiff's duly authorized agent, and has at all times since stood ready to perform all of its duties under said contract which were to be performed either be-

fore or after rendition of a title opinion of the Attorney General setting forth his title requirements.

4. Defendant says that plaintiff did not at any time inform it as to any opinion of the Attorney General with reference to title to the land described in said contract and that plaintiff has withheld from this defendant the amount of $52,000.00 named as the purchase price therein.

5. Defendant, answering further, says that the terms and provisions of the aforesaid contract, and, among others, the following provision:

"If for any reason the title to the land is not approved by the Attorney-General, the Government will proceed to acquire the land by condemnation proceeding instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option, and will, upon filing its petition in such proceedings, deposit said agreed purchase price with the Clerk of said Court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings."

are applicable in this proceeding.

Wherefore, defendant prays that the prayer in plaintiff's petition for the appointment of three disinterested commissioners to fix compensation be denied and that the judgment entered in the within condemnation proceeding shall award compensation in the amount of $52,000.00 as a consent verdict, fixed in accordance with the agreement be- [fol. 47] tween this defendant and the plaintiff herein, embodied in the aforesaid contract, as to the amount of compensation for said land, and shall award an additional sum as just compensation which shall amount to 6% interest per annum on said $52,000.00 from the 30th day of November, 1940 to the 9th day of April, 1941, the date upon which the within suit was filed and the sum of $15,000.00 deposited in the Registry of this Court as estimated just compensation, and an additional amount as just compensation, being 6% per annum on $37,000.00, being the difference between the contract price and the amount heretofore paid into the Registry of this Court, from the 9th day of April, 1941 to

the date upon which the remaining sum shall be paid into Court.

SAMUEL M. WATSON,
Attorney for Defendant.

Photostat Copy Of The Option Attached

[fol. 49] Motion for Judgment for Plaintiff in Condemnation and for Defendant Fixing Compensation at Agreed Valuation in Option Plus Interest at Rate of 6% per annum on Agreed Valuation from date of Possession to Date of Declaration of Taking Plus Interest on sum being the difference between the Agreed Valuation and the amount deposited in Court Registry on Date of Declaration of Taking from said last mentioned date to Date of Payment.

(Filed April 3, 1945.)

Comes now the defendant Q. W. S. S. Realty and Investment Company, a corporation, by its attorney, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed herein and for defendant fixing defendant's compensation herein for the taking of said real estate at $52,000.00, the amount of the agreed valuation in the option contract set forth in defendant's Amended Answer herein, and fixing defendant's compensation herein for the loss of possession of said real estate from the 30th day of November, 1940, the date upon which defendant relinquished possession to plaintiff, to the 9th day of April, 1941, the date upon which title to said real estate passed to plaintiff by virtue of the declaration of taking filed herein accompanied by payment of the sum of $15,000.00 into the Court Registry as estimated compensation, at $1153.78, being interest at the rate of 6% per annum on said agreed valuation for four months and nine days, being the period of time from the aforesaid date of November 30, 1940 to the aforesaid date of April 9, 1941, and fixing defendant's compensation herein for having withheld from it from and after April 9, 1941, the sum of $37,000.00, being the difference between the agreed valu-

ation and the amount deposited in Court on April 9, 1941, at interest at the rate of 6% per annum on said sum of $37,000.00 so withheld from it for the period of time from April 9, 1941 to the date upon which the remaining sum of $37,000.00 shall be paid into the Registry of this Court.

SAMUEL M. WATSON,
Attorney for Above Named Defendant.

[fol. 50] (List of Checks deposited in Registry of District Court to cover certain Lands in Weldon Spring Ordnance Project.)
(Filed May 17, 1945.)

In The United States District Court
Eastern District Of Missouri
Eastern Division

Weldon Spring Ordnance Project

Cases No. 767	— Deficiency —	$26,900.04	818 — Def. —		$114.00
765	— " —	7,028.20	817 — " —		8,140.00
766	— " —	22,365.00	820 — " —		19,193.00
763	— " —	5,125.00	822 — " —		6,760.00
764	— " —	22,791.00	824 — " —		4,770.00
771	— " —	6,170.00	823 — " —		13,092.00
772	— " —	660.00	854 — " —		6,100.00
777	— " —	5,855.00	877 — " —		3,725.00
778	— " —	2,935.20	865 — " —		567.00
779	— " —	3,967.83	866 — " —		7,510.00
780	— " —	2,000.00	863 — " —		932.50
781	— " —	875.00	873 — " —		7,457.20
782	— " —	5,792.00	872 — " —		6,900.00
783	— " —	5,700.00	858 — " —		3,443.00
784	— " —	4,368.00	860 — " —		8,040.00
785	— " —	34,250.00	859 — " —		16,480.00
786	— " —	2,630.18	862 — " —		2,200.00
796	— " —	19,694.00	879 — " —		1,440.00
805	— " —	21,511.25	875 — " —		5,729.00
812	— " —	6,080.00	876 — " —		7,695.00
810	— " —	110.00	856 — " —		4,300.00
813	— " —	4,428.75	868 — " —		1,380.00
814	— " —	7,283.00	869 — " —		3,697.00
797	— " —	3,825.00	960 — " —		48,500.00
806	— " —	2,940.00	978 — " —		14,132.00
808	— " —	11,140.00	985 — " —		1,240.00
811	— " —	5,435.00	988 — " —		21,374.25
834	— " —	4,878.00	984 — " —		1,500.00
841	— " —	8,670.00	999 — " —		2,140.00
833	— " —	2,150.00	1000 — " —		500.00
840	— " —	3,580.00	1001 — " —		2,590.00

832	—	"	—	760.00	1002	—	"	—	11,115.25
827	—	"	—	7,940.00	1003	—	"	—	29,297.00
843	—	"	—	4,620.00	979	—	"	—	7,120.00
836	—	"	—	1,200.00	981	—	"	—	25,000.00
829	—	"	—	312.00	980	—	"	—	16,312.50
839	—	"	—	4,860.00	989	—	"	—	3,100.00
838	—	"	—	2,440.00	986	—	"	—	2,600.00
844	—	"	—	1,493.36	987	—	"	—	18,000.00
835	—	"	—	6,960.00	992	—	"	—	933.00
826	—	"	—	3,760.00	993	—	"	—	3,617.00
852	—	"	—	17,460.00	994	—	"	—	1,100.00
853	—	"	—	850.00	995	—	"	—	16,000.00
774	—	"	—	1,563.00	997	—	"	—	20,400.00
798	—	"	—	8,260.00	991	—	"	—	1,750.00
803	—	"	—	4,100.00	1006	—	"	—	3,600.00
789	—	"	—	10,820.00	1010	—	"	—	32,804.45
792	—	"	—	9,775.74	1015	—	"	—	23,129.45
800	—	"	—	36,720.00	1014	—	"	—	450.00
790	—	"	—	8,440.00	1021	—	"	—	7,140.00
791	—	"	—	9,042.00	1019	—	"	—	12,174.00
793	—	"	—	5,100.00	1020	—	"	—	6,170.20
794	—	"	—	17,985.00	1648	—	"	—	1,670.00
804	—	"	—	14,780.00	1652	—	"	—	2,723.00
819	—	"	—	3,050.00					

$920,085.35

[fol. 51] Check No. ——————8,051,506 ————$87,595.70
——————8,051,507 ———— 48,500.00
——————8,051,508 ———— 4,393.00
——————8,051,509 ————115,932.50
——————8,051,510 ————182,604.74
——————8,051,511 ———— 85,468.10
——————8,051,512 ————229,583.57
——————8,051,513 ———— 7,028.20
——————8,051,514 ———— 83,798.54
——————8,051,515 ———— 22,365.00
——————8,051,516 ———— 26,900.00
——————8,051,517 ———— 22,791.00
——————8,051,518 ———— 3,125.00

$920,085.35

of the Treasurer of the United States, in the sum of $920,085.35, to the order of the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, deposited by the plaintiff for the lands described in the petitions, the aforesaid sum of $920,085.35 being deposited by the plaintiff in the Registry of the Court herein as to the aforesaid lands, for the use and benefit of

the person or persons entitled thereto, the same to be applied under orders of this Court.

HARRY C. BLANTON,
United States District Attorney.

Received the above mentioned checks and deposited same in the Registry of this Court, this 17th day of May, 1945.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.

[fol. 52]

Opinion.

(Filed June 22, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff;

vs.

Certain Land in St. Charles County, Missouri, Known as The Weldon Spring Area, Defendants.

No. 782: No. 840: No. 980:
No. 784: No. 844: No. 984:
No. 80: No. 852: No. 988:
No. 820: No. 854: No. 994:
No. 822: No. 862: No. 1002:
No. 824: No. 868: No. 1020:
No. 832: No. 872: No. 1648:
No. 834: No. 878: No. 1652:
No. 838: No. 978: .....

The above cases, together with the cases pending in each of the other divisions of this court, for the purpose of avoiding repetition of the argument before each judge, were argued before the judges of the three divisions sitting en banc.

I have carefully studied the records and the briefs submitted, as well as the Memorandum Opinions written by my colleagues Judge Moore and Judge Hulen. In view of the fact that the other judges have written conflicting opinions respecting their views and have arrived at dif-

ferent conclusions, I see no necessity for filing an extended opinion on my part.

I am of the opinion that the defendants are entitled to interest on the difference between the amounts deposited in the registry of the court at the date of the filing of the Declaration of Taking and the amount specified in the option agreement until such difference is deposited in the registry of the court for the benefit of the defendants.

I am also of the opinion that the owners are not entitled to interest from the date of the taking of possession by the Government under the option agreements, until the filing of the Declarations of Taking.

I therefore concur in the conclusions reached by my colleague Judge Moore in his Memorandum Opinion filed on June 8, 1945.

Judgments may be substituted for approval, allowance and entry.

R. M. DUNCAN,
United States District Judge.

Dated this 22nd day of June, 1945.

[fol. 53] Findings and Judgment.

(Filed November 26, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 800. vs. At Law.
356.51 acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty and Investment Company, a Corporation, et al., Defendants.

Now on this day, the Court having heretofore heard a motion filed by the plaintiff for judgment for plaintiff in condemnation and fixing the amount to be paid the defendants at the price agreed to by option contract referred to and set up in the answer filed by the defendants herein, without interest, and a countermotion thereto by the de-

fendant Q. W. S. S. Realty and Investment Company, a Corporation for judgment including interest, and evidence having been heard and arguments of counsel having been made, and said motions taken under advisement and the Court, being now fully informed in the premises, doth find:

That this is a proceeding in condemnation instituted by the United States of America, as plaintiff, against Q. W. S. S. Realty and Investment Company, a Corporation, to condemn the land hereinafter described, as in such cases made and provided by the laws of the United States of America, and in which there was filed a Declaration of Taking as provided for by Title 40, U. S. Code, Section 258a.

That all of the defendants have been duly served with process, as required by law, or have duly entered their ap- [fol. 54] pearances herein; and that this Court has jurisdiction of the subject matter of this cause and of all of the parties thereto.

That prior to the filing of the petition herein and prior to any proceedings in connection therewith, including the filing of a Declaration of Taking in this cause, the defendant Q. W. S. S. Realty and Investment Company, a Corporation and the plaintiff, through the War Department of the United States, entered into and executed a contract, sometimes referred to as an "option contract" which was accepted by the plaintiff in accordance with the terms thereof, whereby and as a result of which the plaintiff agreed to purchase and the said last named defendant agreed to sell to the plaintiff for the agreed valuation, being at a price in the sum of $52,000.00, the real estate or land hereinafter described.

That the said defendant Q. W. S. S. Realty and Investment Company, a Corporation was, at the time of executing said option contract and the filing of said Declaration of Taking, the owner in fee simple of the land hereinafter described.

That upon the acceptance by the plaintiff of said option contract on or about the 30th day of November, 1940, possession of the land hereinafter described was taken by

and has ever since been in the plaintiff, United States of America.

That since this proceeding was instituted and the Declaration of Taking filed herein, the Supreme Court of the United States has held binding on the parties thereto, insofar as concerns the worth or value of the land at the time of taking by the United States of America, an option contract for the sale of land, the provisions of which and the circumstances surrounding the execution of which are the same as the option contract executed by the plaintiff and the defendant Q. W. S. S. Realty and Investment Company, a Corporation except as to dates, the names of the landowners, the description of the property, and the sale price. That under the aforesaid decision of the [fol. 55] Supreme Court of the United States and the terms and provisions of the option contract executed by the plaintiff and the defendant Q. W. S. S. Realty and Investment Company, a Corporation, the sum of $52,000.00 was and is the valuation agreed upon in said Option contract as the value or worth of the land hereinafter described at the time of the taking thereof by the plaintiff, and said defendant landowners were entitled to said sum of $52,000.00 for the taking of said land, hereinafter described, as of the date of the taking of said land.

That on the 7th day of April, 1941, prior to the aforesaid decision of the Supreme Court of the United States, the plaintiff herein caused to be filed in this cause a Declaration of Taking of the land, hereinafter described, by Henry L. Stimson, Secretary of War of the United States, and, upon the filing of said Declaration of Taking, the fee simple title to the land therein described and hereinafter described became vested in the United States of America, the plaintiff herein, and the title to and possession of said land was then and has ever since been in the plaintiff, United States of America, and none of the defendants has since had any right, title or interest in said land.

That at the time of the filing of said Declaration of Taking by Henry L. Stimson, Secretary of War of the United States, there was deposited by plaintiff in the Registry of this Court the sum of $15,280.00 as the then

estimated compensation stated in said Declaration of Taking for the appropriation and taking by plaintiff of the fee simple title to the land in said Declaration described and hereinafter described; but that said deposit was erroneous and insufficient in that the same failed to equal the agreed value or worth of said land hereinafter described at the date of the taking and appropriation thereof by plaintiff.

That on the 17th day of May, 1945, there was deposited in the Registry of this Court by plaintiff an additional [fol. 56] sum of $36,720.00 as further compensation for the taking and appropriation by plaintiff of the fee simple title to the land in said Declaration of Taking described, and hereinafter described.

That the said deposits heretofore made by plaintiff into the Registry of this Court were erroneous and insufficient in that the same failed to include interest on the $36,720.00 withheld from the Registry of this Court during the period from the filing of the Declaration of Taking herein on the 7th day of April, 1941, until the 17th day of May, 1945, which interest defendant landowners were and are entitled to receive as a part of the just compensation for the taking and appropriation by plaintiff of the land hereinafter described.

That the plaintiff's petition and the proceedings in this cause set forth a cause of action for the purpose of acquiring, by proceedings in condemnation, the fee simple title to the land hereinafter described, which land was and is necessary to provide for the establishment of an Ordnance Plant for the national defense of the United States of America and for other military use incidental thereto in connection with the Weldon Spring Ordnance Plant; and that the awarding to the plaintiff of a judgment in condemnation, and the awarding to the defendant landowners of full just compensation for said land in this condemnation proceeding will perfect in the plaintiff, and divest from defendants, finally and completely, the title to the land hereinafter described, in conformity with the law of the United States of America.

That the land described in plaintiff's petition is the land described in the Declaration of Taking referred to

herein, is located in St. Charles County, State of Missouri, and is bounded, defined and described as follows:

[fol. 57] Amended Description
Case No. 800
Tract No. 174

A tract of land located partly within U. S. Surveys Nos. 476, 1670, and 3106, Twp. 45 N. R. 2 & 3 E., and more particularly described as follows:

Beginning at a point on the Eastern line of Survey No. 476, said point bearing S. 22° 22′ W. 2.75 chains from the N. E. corner of said Survey No. 476; thence N. 86° 58′ E. 6.92 chains to a point; thence N. 55° 03′ E. 7.56 chains to a point; thence S. 61° 39′ E. 15.27 chains to a point on the northwestern right-of-way line of State Highway No. 94; thence along said right-of-way line N. 35° 25′ E. 3.04 chains to point of curvature; thence northeastwardly along a curve of said Highway, having a radius of 7.146 chains, thru a central angle of 36° 20′ to the right, a distance of 4.53 chains to point of tangent of said right-of-way curve; thence N. 71° 45′ E. 7.40 chains to a point on said right-of-way line; thence S. 67° 12′ E. 7.67 chains to a point; thence N. 56° 17′ E. 4.92 chains to a point; thence S. 55° 27′ E. 3.00 chains to a point in the center line of the Missouri, Kansas and Texas right-of-way; thence N. 58° 15′ E. along said center line 28.16 chains to a point; thence S. 66° 36′ E. 8.97 chains to a point on the left bank of the Missouri River; thence along the left bank of said river and the property now or formerly of Mitchell Castlio the following courses and distances: S. 37° 05′ W. 6.50 chains S. 18° W. 7.10 chains and S. 24° 30′ W. 5.41 chains to the property of said Castlio; thence along said property line the following courses and distances: N. 43° W. 4.22 chains to a point; thence N. 68° 38′ W. 2.51 chains to a point; thence N. 89° 49′ W. 3.90 chains to a point; thence S. 72° 29′ W. 2.88 chains to a point; thence S. 66° 12′ W. 7.79 chains to a point; thence S. 62° W. 5.02 chains to a point; thence S. 78° 30′ W. 7.63 chains to a point; thence west 5.54 chains to a point on the southeast right-of-way line of said Missouri, Kansas and Texas Railroad; thence S. 57° 30′ W. along said right-of-way line 3.56 chains to a point; thence S. 17° 30′ W. 7.82 chains to a point; thence S. 23°

30′ E. 8.56 chains to a point in the center line of Femme Osage Creek; thence along the center line of said creek the following courses and distances: N. 75° E. 2.18 chains; N. 64° E. 6.81 chains; N. 60° 45′ E. 3.84 chains; N. 59° 30′ E. 10.30 chains; N. 71° E. 2.18 chains; N. 88° E. 3.70 chains; East 2.31 chains and N. 75° E. 6.10 chains to a point at the intersection of said center line of said creek with the left bank of the Missouri River; thence along the left bank of said river S. 33° 30′ W. 26.90 chains to a point; thence N. 68° W. along the prolongation of the northern line of U. S. Survey No. 1670, 1.08 chains to an iron bar at the northeast corner of said Survey No. 1670; thence S. 22° W. 15.98 chains to a point; thence N. 68° W. 39.25 chains to a point; thence S. 22° W. 14.27 chains to a point; thence N. 68° W. 17.24 chains to a point; thence S. 22° W. 28.72 chains to a point; thence S. 68° E. 1.39 chains to a point; thence S. 22° W. 11.11 chains to a point in the southern line of Survey No. 1670, which line is also the northern line of U. S. Survey No. 44; thence N. 68° W. along said survey line 9.10 chains; thence N. 22° 22′ E. along the western line of Survey No. 1670 and the Eastern line of Survey No. 476, 14.50 chains to a point on the right bank of the Femme Osage Creek; thence along the right bank of said creek the following courses and distances: N. 54° 16′ W. 1.74 chains; N. 34° 44′ W. 5.50 chains; N. 51° 31′ W. 1.55 chains; N. 36° 13′ W. 1.60 chains; N. 8° 51′ W. 1.15 chains; N. 13° 28′ E. 2.42 chains; N. 45° 45′ E. 1.61 [fol. 58] chains; N. 61° 52′ E. 2.63 chains; N. 54° 56′ E. 4.67 chains; N. 62° 15′ E. 1.88 chains; N. 54° 01′ E. 2.81 chains; N. 47° 44′ E. 1.50 chains; N. 41° 49′ E. 2.33 chains; N. 36° 42′ E. 3.73 chains and N. 47° 56′ E. 0.66 chains to a point in the western line of said Survey No. 1670; thence N. 22° 22′ E. along said survey line, 35.69 chains to the point of beginning, said tract containing 311 acres, more or less, exclusive of State Highway No. 94 and the Missouri, Kansas and Texas Railroad right-of-way, and subject to all existing highways and public utility easements.

Also a 12-foot (or 0.182 chain) strip, being part of U. S. Survey No. 1670, Twp. 45 N. R. 2 E., and more particularly described as follows: Beginning at a point in the center line of a county road, which point is also the Northeast corner of U. S. Survey No. 44; thence N. 68° W. along

the north line of said Survey No. 44 and south line of U. S. Survey No. 1670, 15.85 chains to a point; thence N. 22° E. 0.182 chains to a point; thence S. 68° E. 15.85 chains to a point in the center line of said county road; thence S. 22° W. along said center line 0.182 chains to the place of beginning, containing .288 of an acre, more or less; subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 59] That the plaintiff's said motion for judgment should be sustained in part, but should be denied insofar as the same seeks to prevent defendant landowners from receiving any interest as a part of the full just compensation to be allowed to them for said land.

That the defendant landowners' said motion for judgment should be sustained in part, and denied only insofar as the same prays interest on the said sum of $36,720.00 from the date of the taking of physical possession of said land on or about the 30th day of November, 1940, to the filing of the Declaration of Taking herein on the 7th day of April, 1941.

Now, therefore, in accordance with the above findings of fact, it is Ordered, Adjudged And Decreed that:

(1) Plaintiff, United States of America, by virtue of this proceeding, is awarded judgment in condemnation against the premises described in plaintiff's petition and hereinabove described, for the purposes herein defined and specified, and against the defendants herein, and each and all of them, jointly and severally, as their title and rights may appear, and that the title in fee simple, subject to all existing highway and public utility easements, but including the fee underlying such existing easements, is vested in the plaintiff, United States of America, and has been vested in the plaintiff, United States of America, upon and since the filing of the Declaration of Taking, and the defendants, and each and all of them, jointly and severally, are divested of any and all right, title, interest and claim, of every nature and description, in the land above described.

(2) That the defendant landowners are entitled to and there is awarded to them the sum of $72,000.00 as and for the agreed value or worth of said land, established by

the aforesaid option contract, as of the date of the filing of the Declaration of Taking herein, together with interest [fol. 60] on $36,720.00 of said sum at the rate of six per cent (6%) per annum from the 7th day of April, 1941, until the 17th day of May, 1945, which said sum of $36,720.00 and said interest constitute the full just compensation to which defendant landowners and any and all other persons who may be found entitled thereto as claiming by, through or under them are entitled in this cause for said land.

(3) That the Plaintiff shall pay into the Registry of this Court forthwith a sum, being the equivalent of six per cent (6%) interest on said sum of $36,720.00 from the 7th day of April, 1941 to the 17th day of May, 1945, as that part of the just compensation to which defendants are entitled for the taking by plaintiff of said land herein described which has not been heretofore deposited in the Registry of this Court by plaintiff, which amount, together with the amounts heretofore deposited in the Registry of this Court, and not heretofore disbursed by order of this Court, shall repose in the Registry of this Court for the use and benefit of the defendant landowners and other defendants claiming an interest therein by and through the defendant landowners, and for disposition in the way, manner and proportion, as this Court shall hereafter order, adjudge and decree.

(4) That this cause shall be held open for entry of such further and other orders and decrees as may be meet and just in the premises.

Dated this 26th day of November, 1945.

(S) R. M. DUNCAN,
United States District Judge.

[fol. 61] (Motion of Plaintiff for New Trial.)

(Filed November 27, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial for the following reasons:

1. The Court erred in holding that this is an adversary condemnation proceeding;

2. The Court erred in not holding that this is a friendly condemnation proceeding according to the terms and provisions of the option-contract;

3. The Court erred in not holding that the filing of the equitable answer by the property owners converted this condemnation proceeding into an equitable action for the enforcement of the option-contract;

4. The Court erred in holding that this condemnation proceeding differs in no respect from any other condemnation proceeding except in the method of ascertaining the value of the land;

5. The Court erred in not holding that the equitable answer filed by the property owners in this case and the decision of the Supreme Court of the United States upholding the validity of the option-contract and the allegations of the equitable answer took the case out of the operation of the Declaration of Taking part of this condemnation proceeding;

[fol. 62] 6. The Court erred in holding that there was an ascertainment of the value of the land in this proceeding, for it has never been ascertained by this Court nor by any Appellate Court;

7. The Court erred in not holding that the compensation was not ascertained in this proceeding but that on the contrary it was fixed by the option-contract and the opinion of the Supreme Court of the United States holding such option-contract to be valid and binding upon the plaintiff;

8. The Court erred in its construction of the option-contract;

9. The Court erred in holding that the amount mentioned in the option-contract was the fair market value of the land involved in this case at the time of the filing of the Declaration of Taking in this case;

10. The Court erred in not holding that the sum mentioned in the option-contract is the full compensation to which the property owners are entitled in this proceeding;

11. The Court erred in its definition as to what constitutes just compensation;

12. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty to be paid by the plaintiff for its failure to perform the conditions of the option-contract immediately after its acceptance by the Government;

13. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty against the Government for litigating the validity of the option-contract;

14. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty for the Government's delay in the payment of the amount mentioned in the option-contract when such delay was caused by the vigilance and diligence of plaintiff's Officers and Attorneys in litigating the validity of the option-contract, and with the acquiescence of the defendant property owners;

[fol. 63] 15. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty without citing some statute authorizing such penalty;

16. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to promptly perform and fulfill the provisions and conditions of the option-contract;

17. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to fully and completely perform and fulfill the provisions and conditions of the option-contract;

18. The Court erred in its construction of the opinion of the Supreme Court of the United States in the Andrews and Muschany cases;

19. The Court erred in not holding that the Supreme Court of the United States held that the amount mentioned

in the option-contract was full and complete compensation when the Supreme Court said:

"The offer was to sell to the Government at a fixed, definite price. The Government when it accepted this offer, agreed to pay this set amount and no more. The contract contains no provision allowing adjustment of price based on possible future indeterminate expenses . . . The Government knew the total cost when it became bound on the contract." (emphasis added)

20. The Court erred in holding that the burden of proof is upon the Government to show the absence of any contract obligation to pay interest or any statute providing for interest;

21. The Court erred in not holding that the burden of proof is upon the property owners to point out the exact provision of the contract providing for interest or to point out the exact provision of the statute providing for interest and a full compliance by the property owners with such statute;

[fol. 64] 22. The Court erred in allowing interest upon any part of the amount mentioned in the option-contract and for any period of time;

23. The decision of the judgment now entered is contrary to the views of the Court when the question of the option was first presented to the Court in the Muschany and Andrews cases when the District Courts held in the Findings of Fact and Conclusions of Law that the property owners were entitled to recover only the principal amount named in the option without interest;

24. That as the Supreme Court, the Court of Appeals and the District Court all held in passing on the McDowell option that the amount included therein included not only the value of the land but compensation to the title company, compensation to McDowell by way of commission, and other expenses; to now allow interest on the entire sum to the property owner would be to allow him interest on not only the value of his land but also on other items which do not belong to him, but which, in truth and in fact, are being paid by the Government and not by the property owners so the title company and to McDowell;

25. That by including all of these elements in the amount named in the option, as well as the value of the land, the parties conclusively show that they were considering the amount of the option to be the total and entire amount to be paid by the Government as full compensation for the land and the other elements named therein, and further show that it was the intention of the parties that that amount and no additions thereto by way of interest was to be paid by the Government;

26. That the Court erred in holding that the amount named in the option represented the value of the land in view of the holding of the Supreme Court that it did not represent that amount at all, but that it represented the agreed purchase price, and in view of the fact that the option contract itself repeatedly refers to it as the agreed [fol. 65] purchase price and not value;

27. That the position of the land owners in asking for interest under the Declaration of Taking Statute is inconsistent with their prior position heretofore asserted that they were entitled to have the option contract enforced as an option contract and that said contract not calling for interest, having failed to provide for the payment of interest, does not now entitle the landowners to interest in addition to the principal amount named therein;

28. The Court erred in finding that, upon the acceptance by the plaintiff of the said option-contract the possession of the land involved herein was taken by, and has ever since been in the plaintiff, the United States of America, because there was no evidence to sustain the said finding of fact;

29. The Court erred in not holding that the right to immediate possession of the land was included in the consideration mentioned in the option-contract and that such right of immediate posession was contracted for in the said option-contract and that the payment of the consideration mentioned in the option-contract is full payment for the land herein involved and for the right to immediate possession thereof obtained by the plaintiff under such option-contract;

30. The Court erred in holding that there was a taking under the Declaration of Taking filed in this cause such as

contemplated by the Declaration of Taking Statute because the right to possession of the property had theretofore been contracted for under the terms and provisions of the option-contract;

31. The Court erred in holding that the property owners are entitled to interest under the provisions of the Declaration of Taking Statute because there was no taking under the Declaration of Taking which could authorize the allowance of interest under such statute;

[fol. 66] 32. The Court erred in holding that there was an ascertainment of just compensation in this proceeding, such as is mentioned and contemplated in the Declaration of Taking Statute, in order to warrant the inclusion, as part of the just compensation awarded, of interest at the rate of 6% per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment, or upon such part of the amount finally awarded as was not deposited contemporaneously with the Declaration of Taking;

33. The Court erred in holding that the two deposits made in this case, the first with the Declaration of Taking and the second on May 17, 1945 were erroneous and insufficient in that they failed to include any interest;

34. The Court erred in its judgment and decree entered in this cause by adding interest at the rate of 6% per annum upon the deficiency or upon the difference between the amount deposited with the Declaration of Taking and the amount mentioned in the option-contract;

35. The Court erred in its judgment and decree entered in this cause by including interest at the rate of 6% per annum from the date of the Declaration of Taking in this cause to May 17, 1945 upon the amount deposited in the Registry of this Court on the said 17th day of May, 1945;

36. The Court erred in its judgment and decree entered in this cause by requiring the plaintiff to pay into the Registry of the Court forthwith a sum of money equivalent to 6% interest on the sum deposited in the

Registry of this Court on May 17, 1945, from the date of the Declaration of Taking in this case to the date of said deposit on May 17, 1945 as a part of the just compensation to which the defendants are entitled for the taking of the lands involved in this cause;

[fol. 67] 37. The Court erred in its findings and in its judgment and decree in the computation of the amount of the interest adjudged to the defendants upon the deficiency from the date of the Declaration of Taking to May 17, 1945;

38. The Findings and Judgment entered in this cause are contrary to and against the evidence under the law, are contrary to and against the law under the evidence and are contrary to and against the law and the evidence;

Wherefore, Plaintiff moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial herein.

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 27th day of November, 1945.

[fol. 67a] (Docket Entry of Submission and Overruling of Motion of Plaintiff for New Trial.)

November 21, 1945

Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defendants and overruled.

[fol. 68] Statement of Points to be Relied Upon on Appeal.

(Filed December 7, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 800. vs. At Law.
356.51 Acres of Land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty and Investment Company, a Corporation, et al., Defendants.

The United States of America, appellant in the above-entitled case, states that the following points will be relied upon on the appeal:

1. The District Court erred in denying the plaintiff's motion for judgment fixing compensation in the amount of the option contract price, without interest.

2. The District Court erred in entering judgment with interest on $36,720.00, the difference between $52,000.00 the amount of the option contract price, and $15,280.00, the sum deposited with the Declaration of Taking, from April 7, 1941, the date of the filing of the Declaration of Taking, to May 17, 1945, the date of the deposit in court of such difference.

3. The District Court erred in overruling plaintiff's motion for a new trial.

Respectfully submitted,

HARRY C. BLANTON.

Copy of the foregoing Statement mailed to opposing counsel, Mr. Samuel M. Watson. 254 Olive St., St. Louis, Missouri, this 7th day of Decem..., 1945.

HARRY C. BLANTON.

[fol. 69] Designation of the Record on Appeal.

(Filed December 7, 1945.)

United States of America, Appellant in the above entitled cause, designates for inclusion in the Transcript of the Record on Appeal the pleadings, proceedings and evidence as follows:

	Filed
(1) Petition in condemnation as amended July 24, 1941 and as further amended April 8, 1942, March 4, 1945 and December 12, 1942.	April 9, 1941
(2) Declaration of Taking in Cause No. 770, omitting therefrom all names from the caption excepting the defendant Q. W. S. S. Realty and Investment Company, a Corporation, and, omitting from the paragraph describing the parcels of land in the said Declaration all parcels except Tract No. 174	April 7, 1941
(3) Order and Judgment vesting title in Plaintiff as to Tract No. 174 and Order of Immediate Possession	April 9, 1941
(4) Order directing the transfer of the sum of $15,280.00 from Cause No. 770 to this cause for the use and benefit of the defendants in this cause	April 9, 1941
(5) Answer of the defendant, Q. W. S. S. Realty and Investment Company, a Corporation to Plaintiff's petition in condemnation	May 19, 1941
(6) Motion of Plaintiff for Judgment in condemnation and for Judgment for defendants fixing compensation by the option-contract	March 20, 1945
[fol. 70] (7) Order setting for hearing on April 4, 1945 Plaintiff's Mo-	

	tion for Judgment in condemnation	March 20, 1945
(8)	Amended answer of defendant, Q. W. S. S. Realty and Investment Company, a Corporation, to Plaintiff's petition	April 2, 1945
(9)	Motion of defendant, Q. W. S. S. Realty and Investment Company, a Corporation, for Judgment in condemnation for plaintiff and for Judgment for defendant, fixing compensation by option, together with interest	April 3, 1945
(10)	Receipt of the Clerk for 36,720.00 paid into the Registry of the Court	May 17, 1945
(11)	Memorandum Opinion of the Court finding the issues in favor of the defendants and against the Plaintiff	June 22, 1945
(12)	Findings and Judgment	Nov. 26, 1945
(13)	Plaintiff's Motion for New Trial	Nov. 27, 1945
(14)	Docket entry of November 27, 1945, overruling Plaintiff's Motion for New Trial	
(15)	Plaintiff's Notice of Appeal	Nov. 28, 1945
(16)	Appellant's Statement of Points	
(17)	Clerk's Docket entries	
(18)	This Designation of the Record	
(19)	All other pleadings and documents filed in connection with this appeal.	

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

W. WALKER COOPER,
Special Assistant United States Attorney.

Copy of the foregoing designation of record mailed to opposing counsel this 7th day of December, 1945.

HARRY C. BLANTON.

[fol. 71] Clerk's Certificate:

United States of America,
Eastern Division of the Eastern
Judicial District of Missouri—ss.:

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the above and foregoing to be a full, true and complete transcript (except in so far as the same is restricted by the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 800 wherein the United States of America is plaintiff-appellant and 356.51 [Acref] of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 174, and Q. W. S. S. Realty and Investment Company, a corporation, et al., are defendants-appellees, as fully as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, State of Missouri, in said Division of said District this 21st day of December, in the year of our Lord, Nineteen Hundred and Forty-five.

Seal of
U. S. Dist. Court
East. Div. of the
East. Judicial Dist.
of Mo.

JAMES J. O'CONNOR,
Clerk, U. S. District Court,
By John J. Jarvis,
Deputy Clerk.

Filed Dec. 21, 1945. E. E. Koch, Clerk.

[fol. 1] Notice of Appeal.

(Filed November 23, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 987. vs. At Law.
160 Acres of land, more or less, situate in St. Charles County, State of Missouri; Known as Tract No. 11-A, and Edward J. Linnenbringer, et al., Defendants.

Notice is hereby given that the United States of America, Plaintiff in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final Judgment entered in this cause on the 2nd day of July, 1945.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 23rd day of November, 1945.

[fol. 2] Docket entry showing filing of notice of appeal and mailing copy of such notice to attorney for defendant.

(November 23, 1945)

Notice of Appeal of plaintiff to the United States Circuit Court of Appeals, 8th Circuit from final judgment entered herein July 2, 1945, filed by U. S. Attorney and copy of aforesaid notice forthwith mailed by the Clerk of the Court to Wiliam R. Gilbert, Esq., atty. of record for defts. Edward J. Linnenbringer, et al.

[fol. 3] (Clerk's Docket Entries of Case No. 987.)

United States Of America, Plaintiff,
Docket No. 987. vs. At Law.
160 Acres of land, more or less situate in St. Charles County, State of Missouri, known as Tract No. 11-A, and Edward J. Linnenbringer, et al., Defendants.

6-18-41 Motion of plaintiff for leave to file petition in condemnation and for order for summons filed, and granted in order filed and entered; petition in condemnation filed and summons issued, directed to defendants, returnable August 4, 1941; order and judgment on Declaration of Taking filed and entered vesting fee simple title in plaintiff and directing immediate delivery to plaintiff of land in suit; order filed and entered directing notice to be given defendants of judgment on Declaration of Taking and requirement for delivery of possession; clerk of the Court directed to transfer the sum of $16,000.00 from Cause No. 979 to this cause for use and benefit of parties entitled thereto.

7-23-41 Answer of defendants Edward J. and Emma Linnenbringer to plaintiff's petition, filed.

7-29-41 Answer of defendant Elroy H. Linnenbringer to plaintiff's petition filed by leave.

7-29-41 Order filed and entered continuing cause to September 15, 1941.

8- 4-41 Order filed and entered continuing cause to September 15, 1941.

8- 4-41 Marshal's Return as to service to summons filed (Executed).

9-15-41 On motion of U. S. Attorney, order filed and entered continuing cause to October 14, 1941. Division No. 1.

10- 9-41 On motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition relative to land description.

10-14-41 On oral motion of U. S. Attorney, order filed and entered continuing case to January 7, 1942.

11-29-41 Claim of Collector of Revenue of St. Charles County, Missouri, for payment of taxes, filed.

12-17-41 On stipulation between plaintiff and defendants Edward J. Linnenbringer et al., for provisional disbursement of estimated compensation filed and presented, order for distribution of $14,400, out of funds on deposit in Registry of this cause filed and entered.

1- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to March 9, 1942.

[fol. 4] 3- 9-42 On oral motion of U. S. Attorney, Order filed and entered continuing cause to June 9, 1942.

6- 1-42 Upon motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition in certain respects as to unknown owners, etc.

6- 9-42 Upon oral motion of U. S. Attorney, order filed and entered continuing cause to September 9, 1942.

9- 9-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to December 9, 1942.

12- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to January 14, 1943.

1-14-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to April 14, 1943.

4-14-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to October 14, 1943.

7-29-43 On motion of plaintiff filed and presented, order filed and entered directing clerk of the Court to disburse to County officials of St. Charles County, Missouri, for the benefit of Darst Bottom Drainage and Protective District No. 2, certain drainage tax money.

10-14-43 On oral motion of U. S. Attorney, order filed and entered in above case continuing cause to February 14, 1944.

2-14-44 On oral motion of U. S. Attorney, order filed continuing cause to May 15, 1944.

5-15-44 On oral motion of U. S. Attorney, order filed continuing cause to November 4, 1944.

11- 4-44 On oral motion of U. S. Attorney, order filed continuing cause to February 5, 1945.

2- 5-45 On oral motion of U. S. Attorney, order filed continuing cause to May 3, 1945.

4- 6-45 Motion of plaintiff for judgment in condemnation and for judgment for defendants fixing compensation by option filed and order thereon filed and entered setting said motion for hearing on May 7, 1945; vacating order heretofore entered continuing cause to May 3, 1945, and directing plaintiff give notice of such hearing by mail to defendants, their attorneys, and R. Newton McDowell and The Kansas City Title Insurance Company, and by posting notice thereof, etc.

4- 6-45 Claim of plaintiff in its own behalf and for Collector of Internal Revenue for Sixth Collection District of Missouri, asserted by reason of certain lien, interest and penalties thereon against any disbursement herein from Registry awarded to R. Newton McDowell, filed.

[fol. 5] 4-10-45 Affidavit as to mailing of notice to defendants, their attorneys and other parties in interest of hearing on motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option filed by plaintiff.

4-21-45 Clerk's Return to posted notice filed.

4-26-45 Answer of defendant to plaintiff's motion for judgment in condemnation and fixing compensation by option and motion of defendants for judgment as prayed herein, filed.

5- 5-45 Claim of intervening defendant Kansas City Title Insurance Company, filed.

5- 7-45 Motion of plaintiff for judgment for plaintiff in condemnation and for defendant fixing compensation by option and on responsive pleadings thereto and counter-motions of defendants for payment of interest submitted. Defendants desiring to submit briefs granted 10 days and Government ten days thereafter to submit answering brief.

5-17-45 Plaintiff tenders into Court for the use and benefit of persons entitled thereto deficiency in the sum of $18,000.00, which sum is deposited by the Clerk in the Registry.

6- 8-45 Memorandum opinion of the Court filed finding issues in favor of defendants and against plaintiff directing appropriate judgment be submitted respecting the payment of interest, and directing counsel to submit orders ruling on various motions and counter-motions, all in accordance with said opinion, for approval, signature and entry, excepting Cases No. 807 and 874, known as Muschany and Andrews Cases.

6- 8-45 Supplemental claim of U. S. of A. filed.

7- 2-45 Joint Findings and Judgment filed and entered. Judgment in condemnation awarded plaintiff as prayed. Just compensation of defendant landowners in accordance with the option contract fixed at the sum of $34,000.00 plus interest on $18,000.00 of said sum at the rate of 6% per annum from the 18th day of June 1941 to the 17th day of May, 1945. Plaintiff directed to forthwith pay into the Registry of the Court the sum of $4,230.00 being interest at the rate of 6% per annum on the sum of $18,000.00 etc., as that part of just compensation which the owners of the land are entitled to, etc., and which has not heretofore been deposited in the Registry of the Court, which sum of $4,230.00 together with the sum of $34,000.00 heretofore deposited by plain-

tiff shall repose in the Registry of the Court for the benefit of use of the owners of said land entitled thereto and for disposition in the manner and proportion as this Court shall hereafter order, adjudge and decree.

[fol. 6] 7- 7-45 Motion of plaintiff for new trial, filed.

8-10-45 Amended claim of the United States of America, filed.

8-10-45 Claim of R. Newton McDowell, together with stipulation of the respective parties assigning to said McDowell 5% of the funds deposited in the Registry of this Court, etc., filed.

8-24-45 Motion of Reconstruction Finance Corporation to intervene, together with proposed intervening petition, filed.

8-29-45 Order of Hon. Geo. H. Moore, received, filed and entered, fixing September 18, 1945 as time for defendants to file intervening petitions herein and setting such intervening petitions for hearing on September 21, 1945.

9- 7-45 Affidavit as to mailing of notice to defendants to file intervening petitions for distribution of sum on deposit in Registry and of date set for hearing same, filed by plaintiff.

9-17-45 Intervening petition of Blatchford Downing as Assignee-Pledgee of R. Newton McDowell, filed.

9-17-45 On oral motion of U. S. Attorney, order filed continuing cause from September 21, 1945 to September 28, 1945.

9-17-45 Motion to intervene and proposed intervening petition thereto attached of National Refining Company, together with affidavit as to service of aforesaid motion and proposed intervening petition by movant upon parties in interest, filed.

9-18-45 Clerk's Return to posted notice, filed.

9-28-45 By leave, Kansas City Title Insurance Company dismisses its claim herein. Claim of R. Newton McDowell submitted and allowed and sum in-

volved in such allowed-claim ordered held in the Registry of the Court until further order. Cause submitted for distribution. Separate motions of Reconstruction Finance Corporation, et al., for leave to intervene submitted on briefs to be hereafter presented; movants granted one week to submit brief, Government ten days thereafter to submit answering brief and movant Reconstruction Finance Corporation one week thereafter to submit reply brief.

10- 3-45 Order of partial distribution filed and entered.

11-21-45 Motion of plaintiff for a new trial submitted by plaintiff taken as submitted by defendants and overruled.

November 23—Notice of appeal of plaintiff to the United States Circuit Court of Appeals, 8th Circuit from final judgment entered herein July 2, 1945, filed by United States Attorney and copy of aforesaid notice forthwith mailed by the Clerk of the Court to William R. Gilbert, Esq., atty of record for defendants, Edward J. Linnenbringer, et al.

December 7—Appellant's designation of record and (2) statement of points to be relied upon on appeal, filed.

[fol. 7] Petition in Condemnation.

(Filed June 18, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 987. vs. At Law.
Tract No. 11-A.

160 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 11-A, and

Edward J. Linnenbringer, Emma Linnenbringer, wife of Edward J. Linnenbringer, Elroy H. Linnenbringer,

tenant, Darst Bottoms Drainage and Protective District No. 2, a public corporation, Collector Of Revenue Of St. Charles County, Missouri, County Of St. Charles, State Of Missouri,

All Other Unknown Owners of all that tract of land situate in St. Charles County, State of Missouri, Known as Tract No. 11-A, and more particularly described herein, Defendants.

[fol. 8] To The Honorable, The Judges Of The United States District Court For The Eastern District Of Missouri:

Now Comes the plaintiff herein, the United States of America, a sovereign, by its attorneys, Harry C. Blanton, United States Attorney for the Eastern Judicial District of Missouri, and A. G. Edwards, Special Assistant to the United States Attorney, and, leave of Court having been first obtained, files this, its petition herein, at the direction and under the authority of the Attorney General of the United States pursuant to the request of the Secretary of War of the United States, and represents unto the Court as follows:

First: That the defendants herein named are the owners of or claim or may claim an interest or interests in and to the real estate in this petition described, which the plaintiff seeks to condemn in and by this proceeding for the public uses hereinafter more particularly set out;

Second: That the said real estate hereinafter described is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri;

Third: That the plaintiff, the United States of America, is authorized and empowered to acquire the lands herein described by purchase, condemnation, or otherwise, and that the United States Attorney is acting under instructions from the Attorney General of the United States and at the request of the Secretary of War of the United States;

Fourth: That this is an action having for its purpose, among other things, the acquiring by condemnation and in fee simple absolute of the land hereinafter described and the

title thereto, which real estate is located as aforesaid, and [fol. 9] is authorized and directed to be brought by the Secretary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257); and the Act of Congress approved July 2, 1917, USC 50:171, as amended, which authorizes the acquisition by the Secretary of War of land suitable and necessary for military purposes, and the Act of Congress approved June 26, 1940, (Public No. 667—76th Congress); and the Act of Congress approved September 24, 1940, (Publ. Ros. 99—76th Congress); which Acts appropriated funds for such purposes;

Fifth: That the project herein referred to and the matters to be performed, being an acquisition of land for military purposes for an ordnance plant and the national defense of the United States, are within the purview of the sovereign plaintiff and of the Congress of the United States and the said lands and territory to be acquired are located within the jurisdiction of this Court;

Sixth: That it is the opinion of the Secretary of War that it is necessary and advantageous to the interests of this sovereign plaintiff that the said land be acquired by condemnation under judicial process, and that the acquisition in fee simple of said lands be had forthwith; that the money has been appropriated and is available to pay for said lands;

Seventh: That the land to be condemned and the nature and extent of the interests therein of the various persons and claimants thereto as to each respective parcel is described as follows:

[fol. 10] Order 10-9-41

Amended description

Case No. 987, Tract No. 11-A.

Tract No. 11-A, containing 160 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Part of Survey 476, Township 45 North, Range 2 East, described as follows: Beginning at a point on the east line of said Survey being the intersection of said East line with the middle line of the public road leading through said Sur-

vey, a rock; thence with said east line, South 22 degrees West 10 chains, and 25 links to the middle line of Femme Osage Creek; thence following the meanders of the middle line of said creek up the same to its intersection with the boundary line of the first tract described in deed from Barbara A. Tyler to Joseph G. Tyler, of date Nov. 7, 1888; thence North to corner a rock on west bank of Spring Branch at its confluence with said creek; thence North 26½ degrees West 34 chains and 22 links to corner, a rock in center of said public road; thence following the meanders of said road as follows: North 58½ degrees East 8 chains; thence North 32 degrees East 5 chains 50 links; thence North 63 degrees East 3 chains 50 links to West Bank of Little Femme Osage Creek; thence North 28 degrees East 85 links to Elm tree 15 inches in diameter on opposite side of said creek; thence same course (North 28 degrees East) 4 chains 15 links; thence North 73 degrees East 3 chains; thence South 65¾ degrees East 9 chains; thence North 74¾ degrees East 6 chains 50 links; thence South 37½ degrees East 3 chains; thence South 59 degrees East 9 chains; thence South 80 degrees East 5 chains; thence North 77 degrees East 3 chains; thence North 63½ degrees East 6 chains 14 links; to corner a rock in said Road, the place of beginning, this land being situated in St. Charles County, Missouri, and containing 160 acres, more or less; subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 11] (A)

Tract No. 11 A containing 160 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Part of Survey No. 476, Township 45 North, Range 2 East, described as follows: Beginning at a point on the east line of said Survey being the intersection of said east line with the middle line of the public road leading through said Survey, a rock; thence with said east line, South 22 degrees West 10 chains, and 25 links to the middle line of Femme Osage Creek; thence following the meanders of the middle line of said creek up the same to its intersection with the boundary line of the first tract.

described in deed from the grantor herein to Joseph G. Tyler, of even date herewith; thence North to corner a rock on west bank of Spring Branch at its confluence with said creek; thence North 26½ degrees West 34 chains and 22 links to corner, a rock in center of said public road; thence following the meanders of said road as follows: North 58½ degrees East 8 chains; thence North 32 degrees East 5 chains 50 links; thence North 63 degrees East 3 chains 50 links to West Bank of Little Femme Osage Creek; thence North 28 degrees East 85 links to Elm tree 15 inches in diameter on opposite side of said creek; thence same course (North 28 degrees East) 4 chains 15 links; thence North 73 degrees East 9 chains; thence South 65¾ degrees East 9 chains; thence North 74¾ degrees East 6 chains 50 links; thence North 37½ degrees East 3 chains; thence South 59 degrees East 9 chains; thence South 80 degrees East 5 chains; thence North 77 degrees East 3 chains; thence North 63½ degrees East 6 chains 14 links; to corner a rock in said Road, the place of beginning, this land being situated in St. Charles County, Missouri, and containing 160 acres, more or less.

Subject to all existing highway and public utility easements but including the fee underlying such existing easements.

[fol. 12] (B)

That the following defendants own or may own or may claim to have some right, title, interest, lien or estate in, to or upon said land:

Edward J. Linnenbringer

Emma Linnenbringer, wife of Edward J. Linnenbringer

Elroy H. Linnenbringer, tenant

Darst Bottoms Drainage and Protective District No. 2, a public corporation.

[fol. 13] Eighth: That all of the land described in this petition is subject to liens or claims for certain taxes, and the County of St. Charles, State of Missouri, and the Col-

lector of Revenue of St. Charles County, Missouri, are, therefore, named parties defendant herein;

Ninth: That within the boundaries of the above described tract of land are located certain roads and highways; that the defendants hereinbefore named as owners of the fee and as claiming an interest in said lands; each claim and assert, or may claim and assert a reversionary interest in and to the premises respectively so occupied as roads and highways, and which reversionary interests the plaintiff herein seeks to include and condemn in this proceeding;

Tenth: That all and singular, the heirs, husbands, wives, devisees, executors, administrators, representatives, alienees, successors and assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lieners and claimants, having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees, users, holders and owners of and claimants to eastments in, on, over, across or through said lands; and all persons, firms and corporations having or claiming any title to or interest in any of said land or any part thereof, herein sought to be condemned, are made parties defendant, as hereinabove specifically named, if known, and if unknown, such unknown persons by the description of the "Unknown Owners' of the land herein described and to be condemned, to the end that they may come into court and by proper pleadings make known their interests and claims to said lands or to the proceeds arising therefrom;

Eleventh: That your petitioner has attempted to set forth the interest or estates of all persons, firms and corporations in the lands herein mentioned as far as your petitioner has been able to ascertain the same; but, notwithstanding such statement, all persons, firms or corporations, including all unknown officers, trustees, directors and shareholders of any defunct corporation having or claiming any interest or estate in or to said land, are made parties to this proceeding generally, to the end that all of their rights, title, interests and estate, whatever it [fol. 14] may be, to all and singular, the premises above

mentioned may be reached and divested out of them and vested in your petitioner, the United States of America;

Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and will make and have entered all such orders, judgments and decrees as may be necessary to bring all the known owners of said land before this Court, and to make all unknown parties having any interest therein defendants hereto, and to that end that process, summons and notice may issue for the defendants hereinbefore named, and for the order of the Court directing notice of suit, and for publication thereof to the unknown, not found and non-resident defendants herein, if any there be, all as required by law, giving them notice of the time when and the place where this petition will be heard, and for such other orders and decrees as may be proper and necessary; and that the Court will appoint three disinterested commissioners, qualified by law, to determine, assess, and award the value of the property proposed to be taken and other damages which may be sustained by the respective owners of or persons claiming an interest in and to the aforesaid property hereinbefore described and proposed to be taken; and that said commissioners will assess according to the provisions of the acts appropos to this proceeding and the provisions of the law applicable thereto, under which this action is brought, the special and direct benefits arising from the improvements, if any, which may be sustained by, or may accrue to, said defendants; that the Court will decree to this plaintiff the right of judgment in condemnation herein in fee simple as contemplated by the laws of Congress in this case made applicable, and that these defendants and each of them, and all other claimants, be required to show cause on the day therein fixed why said plaintiff should not have the relief herein prayed for; that plaintiff may have judgment for condemnation of the property hereinbefore described, and that the defendants, and each of them shall be divested of all of their said right, title and interest in and to the aforesaid premises, and that the title thereto in fee simple shall be vested in this sovereign plaintiff, and that it shall have, own and control the same forever; that the Court, upon the filing of this petition, will make an order pursuant to the Act of

[fol. 15] Congress approved February 26, 1931. (46 Stat. 1421), decreeing to the plaintiff the right to take immediate possession of said lands for the purposes hereinbefore described in order that the plaintiff, its servants, agents and employees, may proceed with the aforesaid project and for the purposes hereinbefore required and to permit the said plaintiff to proceed with the work of construction of said ordnance plant as contemplated by the plans of said project; that the plaintiff may have judgment against the respective premises, property or interests therein for special benefits, if any, in excess of the values and damages in each instance assessed in the premises by the aforesaid commissioners; and that this Court will make such further necessary orders in the premises as shall be just, proper, necessary and requisite to vest said lands in fee simple absolute in the United States of America, and grant to this petitioner all such other and further relief in the premises to which this petitioner may be found entitled and as the Court may deem just and proper.

THE UNITED STATES OF AMERICA,
By Harry C. Blanton,
United States Attorney for the
Eastern District of Missouri,
402 New Federal Building,
St. Louis, Missouri.

A. G. EDWARDS,
Special Assistant to the
United States Attorney,
410 New Federal Building,
St. Louis, Missouri.

[fol. 16] United States of America,
Eastern District of Missouri—ss.:

Before me, the undersigned, personally appeared Harry C. Blanton, United States Attorney in and for the Eastern District of Missouri, and made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information

and belief; and that this proceeding is in good faith for the purposes specified in the petition.

HARRY C. BLANTON.

Subscribed and sworn to before me, this 18th day of June, 1941.

JAMES J. O'CONNOR,
Clerk of U. S. District Court in and for the Eastern District of Missouri.
By Ruby Barham, Deputy.

(Seal)

[fol. 17] Declaration of Taking.

(Filed June 16, 1941.)

In The United States District Court In And For The Eastern District Of Missouri.

United States Of America, Petitioner,
Case No. 979. vs.
1,453.50 Acres Of Land, More Or Less, Situate in St. Charles County, State Of Missouri, And Mary Schneider, Et Al., Defendants.

To The Honorable, The United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518, 50 U.S.C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act of Congress approved April 5, 1941 (Public Law 29—77th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the site of an ordnance munitions plant and for

other uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Weldon Springs Ordnance Plant, St. Charles County, Missouri, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

[fol. 18] 2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of the same lands described in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto, subject, however, to existing rights for easements for public utilities.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 13th day of June, A. D. 1941, in the City of Washington, District of Columbia.

HENRY L. STIMSON,
Secretary of War of the United States.

[fol. 19] Schedule "A"

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregates 1,453.50 acres, more or less, situate and being in the County of St. Charles, State of Missouri. A description of the lands ta-

ken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

[fol. 20] Tract No. 11-A.

Description:

Part of Survey No. 476, Township 45 North, Range 2 East, described as follows: Beginning at a point on the east line of said Survey being the intersection of said east line with the middle line of the public road leading through said Survey, a rock; thence with said east line, South 22 degrees West 10 chains, and 25 links to the middle line of Femme Osage Creek; thence following the meanders of the middle line of said creek up the same to its intersection with the boundary line of the first tract described in deed from the grantor herein to Joseph G. Tyler, of even date herewith; thence North to corner a rock on west bank of Spring Branch at its confluence with said creek; thence North 26½ degrees West 34 chains and 22 links to corner, a rock in center of said public road; thence following the meanders of said road as follows: North 58½ degrees East 8 chains; thence North 32 degrees East 5 chains 50 links; thence North 63 degrees East 3 chains 50 links to West Bank of Little Femme Osage Creek; thence North 28 degrees East 85 links to Elm tree 15 inches in diameter on opposite side of said creek; thence same course (North 28 degrees East) 4 chains 15 links; thence North 73 degrees East 9 chains; thence South 65¾ degrees East 9 chains; thence North 74¾ degrees East 6 chains 50 links; thence North 37½ degrees East 3 chains; thence South 59 degrees East 9 chains; thence South 80 degrees East 5 chains; thence North 77 degrees East 3 chains; thence North 63½ degrees East 6 chains 14 links; to corner a rock in said Road, the place of beginning, this land being situated in St. Charles County, Missouri, and containing 160 acres, more or less.

Names of purported owners: Ed. J. Linnenbringer and Emma Linnenbringer

Estimated Compensation: $16,000.00

[fol. 21] Order And Judgment On Declaration Of Taking.

(Filed June 18, 1941.)

In The United States District Court Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 987. vs. At Law.
Tract No. 11-A.
160 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 11-A, and Edward J. Linnenbringer, et al., Defendants.

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter a judgment herein on the Declaration of Taking filed in Case No. 979 on June 16, 1941, and upon consideration of said motion, and the condemnation petition filed herein, and the Declaration of Taking filed in said Cause No. 979, the Court, having heard arguments of counsel and being fully advised in the premises, finds:

First: That a petition in condemnation was duly filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the land described in said petition, and also under authority of the Attorney General of the United States.

Second: That said Petition filed herein and the Declaration of Taking heretofore filed in Cause No. 979 state the authority under which, and the public use for which, said land was taken; that said Declaration of Taking was signed by the Secretary of War of the United States, who was, and is, duly authorized and empowered by law to acquire the land described in said petition for, on behalf of and in the name of the United States of America, for the purposes therein set forth;

[fol. 22] Third: That a proper description of the land taken, sufficient for identification thereof, is set out in the said Declaration of Taking;

Fourth: That the said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use:

Fifth: That a map or plan showing the land taken is annexed to and made a part of the said Declaration of Taking;

Sixth: That a statement is contained in the said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for Tract No. 11-A, in the amount of Sixteen Thousand Dollars ($16,000.00), and that said sum was deposited in the Registry of this Court in Case No. 979 to the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking:

Seventh: That a statement is contained in the said Declaration of Taking that the amount of the ultimate award of compensation for Tract No. 11-A, for the taking of said property, in the opinion of the Secretary of War of the United States, probably will be within any limits prescribed by Congress on the prices to be paid therefor,

It Is Therefore Ordered And Adjudged that the title to said land in fee simple absolute, vested in the United States of America upon the filing of the said Declaration of Taking and depositing in the Registry of this Court of the aforesaid estimated compensation, which land is situated in St. Charles County, Missouri, and described as follows:

[fol. 23] Tract No. 11-A containing 160 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Part of Survey No. 476, Township 45 North, Range 2 East, described as follows: Beginning at a point on the east line of said Survey being the intersection of said east line with the middle line of the public road leading through said Survey, a rock; thence with said east line, South 22 degrees West 10 chains, and 25 links to the middle line of Femme Osage Creek; thence following the meanders of the middle line of said creek up the same to its intersection with the boundary line of the first tract described in deed from the grantor herein to Joseph G. Tyler, of even date herewith; thence North to corner a rock on west bank of Spring Branch at its confluence with said creek; thence North 26½

degrees West 34 chains and 22 links to corner, a rock in center of said public road; thence following the meanders of said road as follows: North 58½ degrees East 8 chains; thence North 32 degrees East 5 chains 50 links; thence North 63 degrees East 3 chains 50 links to West Bank of Little Femme Osage Creek; thence North 28 degrees East 85 links to Elm tree 15 inches in diameter on opposite side of said creek; thence same course (North 28 degrees East) 4 chains 15 links; thence North 73 degrees East 9 chains; thence South 65¾ degrees East 9 chains; thence North 74¾ degrees East 6 chains 50 links; thence North 37½ degrees East 3 chains; thence South 59 degrees East 9 chains; thence South 80 degrees East 5 chains; thence North 77 degrees East 3 chains; thence North 63½ degrees East 6 chains 14 links; to corner a rock in said Road, the place of beginning, this land being situated in St. Charles County, Missouri, and containing 160 acres, more or less.

Subject to all existing highway and public utility easements but including the fee underlying such existing easements.

[fol. 24] that said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding, shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law, and

It Is Further Ordered And Adjudged that the possession of said lands shall be immediately surrendered to the United States of America.

This cause is held open for the entry of such other and further orders and judgments as may be just and equitable in the premises.

Entered on this 18th day of June, 1941.

GEORGE H. MOORE,
United States District Judge.

[fol. 25] Order Transferring Fund From The Declaration Of Taking In Case No. 979.

(Filed June 18, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 987. vs. At Law.
160 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known As Tract No. 11-A, and Edward J. Linnenbringer, et al., Defendants.

Tract No. 11-A.

It appearing to the Court that in the Declaration of Taking filed with Case No. 979 on June 16, 1941, there was paid into the Registry of the Court as estimated compensation for Tract No. 11-A, described in the petition filed herein, the amount of $16,000.00;

On oral motion of the United States Attorney, the Clerk of this Court is directed to transfer $16,000.00, of the whole amount deposited under the Declaration of Taking heretofore filed, to this cause for the use and benefit of the defendants entitled thereto as to Tract No. 11-A.

GEORGE H. MOORE,
United States District Judge.

Dated, this 18th day of June, 1941.

[fol. 26] Answer Of Defendants Edward J. Linnenbringer And Emma Linnenbringer.

(Filed July 23, 1941.)

Now comes the defendants, Edward J. Linnenbringer and Emma Linnenbringer, and for their separate answer to the petition filed by plaintiff in the above styled and numbered cause say:

One: That for their answer to paragraph numbered first in said petition these defendants state that the only interest they claim in the property described in said petition is such as is hereinafter set out; that on the 30th day of

November, 1940 and for a long time prior thereto, these defendants were the owners in fee simple of said real estate together with the improvements thereon, and that on said day the defendants at the instance and request of plaintiff, and on a printed form therefore provided by plaintiff, signed and delivered to plaintiff an option for the sale of said land to plaintiff, whereby plaintiff was granted the right to purchase said real estate for the price and sum of Thirty-Four Thousand ($34,000.00) Dollars; that said op-
[fol. 27] tion further granted to plaintiff the right of immediate occupancy and use of said land for any purpose whatsoever from and after the acceptance by plaintiff of said option which right was to be exercised by plaintiff within thirty (30) days after said 30th day of November, 1940; that thereafter on the 6th day of December, 1940, plaintiff duly and legally exercised its rights under said option, and on said last named day duly and legally accepted the same, and said option thereupon became a binding and legal contract between plaintiff and these defendants whereby these defendants agreed to sell to plaintiff and plaintiff agreed to purchase from these defendants said real estate and improvements at the price and sum of Thirty-four Thousand ($34,000.00) Dollars; that thereafter pursuant to the terms of said option these defendants on the 13th day of January 1941 delivered to plaintiff a Warranety Deed dated January 9th, 1941, duly acknowledged by these defendants on January 13th, 1941, whereby these defendants for the expressed consideration in said deed of Thirty-four Thousand $34,-000.00) dollars conveyed to plaintiff the real estate in plaintiff's petition described, which deed was duly accepted by plaintiff, and on February 7th, 1941 duly filed for record in the Recorder's office of St. Charles County, Missouri, and was thereafter duly recorded in said Recorder's office in Book 197, page 177.

That said conveyance by these defendants to plaintiff of said real estate was made subject to the right of way of the M.K.T. Railroad Company, and subject to all existing highway easements, and included not only all lands described in said deed and in plaintiff's petition but also all lands incident thereto and claimed by these defendants including accreted land and land occupied by them adversely, if any.

[fol. 28] That prior to the time said deed was filed for record there was attached to said deed documentary stamps of the value of Thirty-seven and 40/000 ($37.40) Dollars.

Two: That for answer to paragraph numbered second in said petition these defendants admit that the real estate described in said petition is located in St. Charles County, Missouri and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri.

Three: That for answer to paragraph numbered third these defendants admit that plaintiff was authorized and empowered to acquire the lands in plaintiff's petition described by purchase, condemnation, or otherwise, but deny that plaintiff was authorized to so acquire said lands now except pursuant to the contract between these defendants and the plaintiff which is herein referred to; and admit that the United States Attorney is acting under instructions from the Attorney General of the United States; and denies on information and belief that he is so acting at the request of the Secretary of War of the United States; and states that under the contract heretofore entered into between plaintiff and these defendants the Secretary of War has no right, power or authority to make any requests for the condemnation of said property because of the said contract heretofore made by the plaintiff with these defendants; and the possession heretofore taken by plaintiff; and the deed executed and delivered by these defendants to plaintiff and accepted and recorded by plaintiff for said property.

Four: For answer to paragraph numbered fourth these defendants admit that this is an action to acquire by condemnation in fee simple absolute the land described in plaintiff's petition and the improvements thereon and the title thereto; and admit that this action is brought for said purpose by direction of the Attorney General of the United [fol. 29] States; and these defendants state that said action can only be brough pursuant to said contract between plaintiff and these defendants; and state that whether or not this action is authorized or directed to be brought by the

Secretary of War pursuant to Section 257-4 USC and Section 171, as amended, USC 50 is immaterial because of the said contract and the taking possession of said property by plaintiff, and the recording by plaintiff of the deed to said property; and admit that said two named acts of Congress approved June 26th, 1940 (public No. 667-76th Congress) and the act of Congress approved September 24th, 1940 (Public Resolution 99-76th Congress) appropriated funds for the acquisition of said property by plaintiff.

Five: That for answer to paragraph numbered fifth these defendants admit that plaintiff has the right to acquire the property described in said petition for an ordnance plant and the national defense of the United States within the purview of the sovereign plaintiff and of the Congress of the United States; and that the said property is located within the jurisdiction of this court.

Six: That for answer to paragraph numbered sixth these defendants state that they have no information sufficient to form a belief as to whether or not the opinion of the Secretary of War is, that it is necessary or advantageous to the interest of plaintiff that said property be acquired by condemnation under judicial process, and state that the opinion of the Secretary of War is immaterial because of the contract entered into by plaintiff and these dedefendants, and the possession and deed to said property delivered to and accepted by plaintiff; and admit that the money has been appropriated and is available to pay for said property.

[Vol. 30] Seventh: That for answer to paragraph numbered seventh these defendants admit that the property sought to be condemned by this proceeding and described in said paragrapth numbered seventh, is subject to all existing highway and public utility easements but including the fee underlying such existing easements, and is the same property described in the contract between plaintiff and these defendants, and the same property conveyed by these defendants to plaintiff by Warranty Deed dated January 9th, 1941 and recorded in the Recorder's office in St. Charles County, Missouri, in book 197 page 177; and these defendants make no claim to said property except such claim as is set forth in this answer.

And these defendants further say that the defendant, Elroy H. Linnenbringer, described in plaintiff's petition as tenant, was not a tenant of these defendants, and that defendant, Elroy H. Linnenbringer, has no right, title claim or interest of any kind in or to said real estate or the improvements thereon.

These defendants admit that the defendant, Darst Bottom Drainage and Protection District Number 2, is a public corporation duly organized and existing as a drainage and protection district under an order of the County Court of St. Charles County, Missouri; and that 45 acres of the real estate described in plaintiff's petition is within the boundary lines of said Drainage and Protection District; that said 45 acres of the land described in plaintiff's petition within the boundary line of said Drainage and Protection District is described as follows: Part of U. S. Survey No. 476 being that part thereof lying Southeastwardly of the Southeasterly Right of Way line of the Missouri Kansas Texas Railroad and Northwesterly of the center line of Femme Osage Creek and Northeasterly of a line bearing North 26½° West from a point on the West bank of a Spring Branch at a confluence with Femme Osage Creek 10 chains, more or less, eastwardly from the Northerly corner of U. S. Survey No. 44; that [fol. 31] said defendant, Darst Bottom Drainage and Protection District Number 2, had a lien upon said 45 acres of land for the annual installment tax levied by the Board of Suprevisors of said Drainage and Protection District on or about September 1st, 1940 in the sum of Twenty-one and 86/100 ($21.86) Dollars which has been paid; that at the time of the organization of said Drainage and Protection District it was determined that the work and improvements contemplated by said district should be payable in twenty (20) installments, the last installment to be due and payable in the year 1945; and these defendants say upon information and belief that said 45 acres of ground will be subject to liens for the annual installment tax for the years 1941, 1942, 1943, 1944, and 1945 which lien for said years, however, will not accrue until the annual installment tax is levied as provided for by law.

Eight: That for answer to paragraph numbered eighth of said petition these defendants admit that all of the property described in plaintiff's petition is subject to liens or claim for general taxes assessed as of June 1st, 1940.

Nine: That for answer to paragraph numbered ninth these defendants state that whether or not there are within the boundaries of the land, described in plaintiff's petition, roads or highways is immaterial because by the conveyance to plaintiff, as herein set out, of the fee simple title of said property the plaintiff became the owner of all such interest, and these defendants could not after the payment to them of the amount agreed upon by said contract claim or assert a reversionary interest or any interest in or to any of the premises so occupied by roads or highways; and admit that by condemnation proceedings any reversionary interest which defendants might have asserted except for said contract, possession and deed will be included and covered by condemnation thereof by the plaintiff herein.

Ten: For answer to paragraph numbered tenth of said petition these defendants state that there are no other persons except these defendants who have or can have or [fol. 32] claim to hav any interest in or to said property or the contract for the sale thereof and the deed to plaintiff.

Eleven: For answer to paragraph numbered eleventh of said petition these defendants state that there are no other persons except these defendants who have or can have or claim to have any interest in said property or the contract for the sale thereof and the deed to plaintiff.

Twelve: Further answering said petition these defendants say that on or about the 30th day of November, 1940 they granted unto the plaintiff an option to purchase the property described in said petition for condemnation together with the improvements thereon for the price and sum of Thirty-four Thousand ($34,000.00) Dollars; that thereafter pursuant to the terms of said contract said option was exercised and accepted on the 6th day of December, 1940 by the plaintiff by its duly authorized official; that said option contract and acceptance are in words and figures as follows:

Option to Purchase Land.

Know All Men By These Presents: That the undersigned Ed. J. Linnenbringer and Emma Linnenbringer his wife for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is herby acknowledged, hereby agrees for their, heirs, executors and assigns, to sell and convey to the Government for the

34000.00

consideration of thirty four thousand dollars and no cents that certain piece or parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

The following described Real estate being and situate, lying and being in the County of St. Charles and State of Missouri, to-wit: which is more particularly described as follows: Part of Survey No. 476 in township 45 Range 2 East, bounded and more particularly described as follows: Beginning at a point on the East line of said Survey being the intersection of said East line with the middle line of Public road leading through said Survey, a rock, thence [fol. 33] with said East line S. 22° West 10.25 chains to middle line of Femme Osage Creek, thence following the meanders of the middle line of said creek up the same to its intersection with the boundary line of the first tract described in deed from Barbara A. Tyler, dated Nov. 17, 1888, thence North to corner, a rock on West Bank of Spring Branch at its confluence with said Creek, thence N. 26½° West 34.22 chains to corner a rock in center of said public road, thence following the meanders of said road as follows: N. 58½° E. 8 chains, then N. 32° East 5.50 chains, thence N. 63° E. 3.50 chains, to West bank of Little Femme Osage Creek, thence N. 28° East 85 links to Elm tree 15 inches in diameter on the opposite side of said creek, thence the same course N. 28° E. 4.15 chains, thence N. 73° E. 9 chains, thence S. 65¾° E. 9 chains, thence N. 77° East 3 chains, thence North 63½° East 6.14 chains to corner, a rock, in said road the place of beginning, containing 160 acres, more or less. Being the same land conveyed to Lloyd C. Tyler and Barbara A. Tyler as per deed dated No. 17, 1888 and recorded in

Book 47 at page 130 of the Recorders Office of St. Charles County, Missouri.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a commission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned, the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes, and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company show- [fol. 34] ing title to be good and marketable as vested in the United States of America, free of all liens and encumbrance. In the event the title shall be unmerchantable, the undersigned agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of America, the agreed purchase price above mentioned will be paid by the Government to th undrsigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at Defiance, Mo., this 30 day of November 1940.

ED J. LINNENBRINGER,
EMMA LINNENBRINGER.

Witness:
Ray H. McClain
Elroy H. Linnenbringer.

Accepted by and on behalf of the United States of America this 6th day of December 1940.

R. D. VALLIANT,
Colonel Q.M.C.
United States Army.

[fol. 35] That thereafter these defendants executed and delivered to the plaintiff a warranty deed dated January 9th, 1941, acknowledged by these defendants on January 13th, 1941 whereby these defendants conveyed to plaintiff the real estate described in plaintiffs petition; that said deed was duly accepted by the plaintiff and on the 7th day of February 1941 was filed for record in the Recorder's office of St. Charles County, Missouri, and was duly recorded in said office in book 197 page 177; that on or about said 13th day of January the plaintiff took possession of the real estate described in plaintiff's petition and has continuously since said time and now is in the

possession of said real estate; that said deed was made and delivered to plaintiff pursuant to the terms of the contract aforesaid and that under and pursuant to said contract the Attorney General of the United States had power for and on behalf of the United States to institute a proceeding in condemnation to require said property and has exercised such right; and that judgment should be entered in favor of these defendants for the amount specified in said contract to-wit: the sum of Thirty-four Thousand ($34,000.00) Dollars and interest thereon at six per cent (6%) per annum from the 13th day of January, 1941; and these defendants say that this court has no authority to appoint commissioners or to take any other or further steps in said condemnation proceeding except to enter judgment in condemnation awarding these defendants said sum as provided for in said contract; that by reason of the foregoing facts it is estopped to claim that it has any right to proceed in this condemnation proceeding except in accordance with the foregoing contract and is estopped to claim it is entitled to the appointment of commissioners and is estopped to claim any relief can be awarded plaintiff except entry of judgment in said contract.

Thirteen: These defendants further state that pursuant to the terms of the contract aforesaid the defendants fully and completely performed all of their obligations required thereunder, but they say that the plaintiff has failed, neglected and refused to pay these defendants the consideration therein agreed to be paid; that therefore these defendants are entitled to judgment for said amount and interest as above set out.

[fol. 36] Fourteen: These defendants further say that the plaintiff and defendants agreed on the price of said property to be acquired by plaintiff for said ordnance and defense purposes as above set out, and that they agreed on the price and sum of Thirty-four Thousand ($34,000.00) Dollars; and that these defendants pursuant to said agreement delivered a deed to plaintiff on or about the 13th day of January, 1941 and on said same day delivered the possession of all of said property to plaintiff, and that plaintiff has ever since remained in possession of said property and is now in possession of the same; that

plaintiff and defendants having so agreed on the price of said property, defendants are entitled to judgment in this condemnation proceeding for the sum of Thirty-four Thousand ($34,000.00) Dollars with interest at the rate of six per cent (6%) per annum from the 13th day of January, 1941.

Fifteen: Wherefore, these defendants pray that judgment be entered herein for said sum of Thirty-four Thousand ($34,000.00) Dollars as provided for in said contract with interest from January 13th, 1941 at the rate of six per cent (6%) per annum and that plaintiff be required to deposit said sum with the clerk of this court or pay said sum direct to these defendants; and that these defendants be awarded such other and further relief and orders as may be necessary to secure to these defendants the said sum with interest so agreed to be paid to these defendants for their said property.

WM. WAYE, JR.
First National Bank Building
St. Charles, Missouri.

ROSCOE ANDERSON,
1320-208 North Broadway,
St. Louis, Missouri.

WM. R. GILBERT,
1320-208 North Broadway,
St. Louis, Missouri.
Attorneys for Defendants, Edward J. Linnenbringer and Emma Linnenbringer.

[fol. 37] Answer of Defendant Elroy H. Linnenbringer.

(Filed July 29, 1941.)

Now comes Elroy H. Linnenbringer, one of the defendants named in the above numbered and styled cause, and for his separate answer to the petition filed by plaintiff in said cause admits that the real estate described in plaintiff's petition was, on and prior to January 13th, 1941 owned by Edward J. Linnenbringer and Emma Linnenbringer, but denies that he was a tenant of the owners

of said land at the time plaintiff's petition in said cause was filed, and denies that he has any interest in said real estate as tenant or otherwise, and denies that he has any interest in any award which may be made to defendants, Edward J. Linnenbringer and Emma Linnenbringer, by plaintiff on account of the condemnation of said real estate; and this defendant hereby disclaims any and all interest in said real estate, and in and to any award which may be made on account of the condemnation of the real estate described in plaintiff's said petition.

ELROY H. LINNENBRINGER,
Defendant. Wright City, Missouri.

Copy of above answer received this 29th day of July, 1941.

HARRY C. BLANTON,
By M. Walker Cooper,
United States District Attorney.

[fol. 38] Motion For Judgment For Plaintiff In Condemnation And For Defendants Fixing Compensation By Option.

(Filed April 6, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for dedefendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest, and as reasons for said motion states:

(1) That this suit was filed by plaintiff to acquire, by condemnation, the real estate described in the petition filed in this cause, that a Declaration of Taking was filed and the sum of $16,000.00 was deposited in the Registry of the Court as the estimated just compensation for said real estate;

(2) That prior to the filing of the petition in this cause the defendants and the plaintiff, through the War Department, had executed an option contract for the purchase by the United States of America from the defendants the said

real estate for the sum of $34,000.00, being the amount of compensation fixed in said option contract;

(3) The United States Supreme Court in the case of Muschany vs. United States, 89 L. Ed. Adv. Op. 492 (1945) has held an option contract to be valid and binding, which [fol. 39] option contract is identical with the provisions of the option contract in this case with the exception of the names of the owners, the description of the property and the amount of compensation;

(4) That the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands described in plaintiff's petition for the purposes therein defined and against the defendants named in this cause, and against each and all of them, jointly and severally, as their rights may appear, and that the defendants, and each and all of them, jointly and severally are entitled to compensation in solido in the sum of $34,000.00, without interest, being the full amount of the compensation mentioned in said option contract;

(5) That R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, under the terms and conditions of the said option contract, have, or may have, some right, title or interest in and to the said sum of $34,000.00 mentioned in said option contract.

Wherefore, plaintiff moves the Court to enter judgment in this cause for the condemnation of the said real estate, fixing the compensation to be paid by plaintiff to the defendants in the sum of $34,000.00, and directing plaintiff to pay into the Registry of the Court the deficiency of $18,000.00 and to make an order citing all persons and corporations, including the said R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, claiming an interest in the said fund to appear in this Court and to set up and file their claims therefor.

HARRY C. BLANTON,
United States Attorney.

.....
Special Assistant United States Attorney.

Dated this 6th day of April, 1945.

[fol. 40] Order Setting Motion For Judgment For Plaintiff In Condemnation And For Defendants Fixing Compensation By Option For Hearing.

(Filed April 6, 1945.)

On oral motion of the plaintiff, by its attorneys, it is Ordered by the Court that the Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option filed by plaintiff in this cause be and the same is hereby set for hearing on the 7th day of May, 1945;

It is further Ordered that the Order of Continuance entered in this cause on the 5th day of February, 1945, continuing this cause to May 3, 1945 be and the same is hereby set aside;

And it is further Ordered that the plaintiff give notice of the date fixed for the hearing of said motion to all defendants in this cause and to their attorneys of record by mailing to each of said defendants, whose places of residence are known, and their attorneys and to R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option and a copy of this order, and by posting in the office of the Clerk of this Court in the City of St. Louis, Missouri a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option, together with a copy of this order, at least ten days before the time fixed in this order for the hearing of said motion.

GEORGE H. MOORE,
United States District Judge.

Dated this 6th day of April, 1945.

[fol. 41] Answer To Plaintiff's Motion For Judgment In Condemnation And Fixing Compensation By Option And Motion Of Defendants For Judgment As Prayed Herein.

(Filed April 26, 1945.)

Now comes defendant Edward J. Linnenbringer, in response to the motion heretofore filed by plaintiff in this cause, asking the court to enter judgment in said cause for plaintiff in condemnation and to fix defendant's compen-

sation in the amount of the option contract therein referred to, but without any interest on said amount, and for answer to said motion defendant says:

1. That he admits the allegations in paragraph 1 of said motion.

2. That he admits that the contract referred to as the option contract, in paragraph 2 of said motion, was duly executed by defendant Edward J. Linnenbringer and by Emma Linnenbringer, his wife, who has since said time died, for the purchase of said real estate as alleged in paragraph 2 of said motion.

3. That he admits the statement contained in paragraph 3 of said motion.

4. That he admits that the plaintiff is entitled to judgment in condemnation against the land of this defendant, described in plaintiff's petition for condemnation filed in [fol. 42] said cause; admits that the defendant Edward J. Linnenbringer, is entitled to compensation in the sum of $34,000.00 for his said land as of the date of taking, and admits that said amount is the value of his said land as fixed in said option contract as of the date said land was taken by plaintiff; and this defendant states that said contract provided that in the event of condemnation, said value should be fixed under a consent verdict, but this defendant denies that plaintiff has any right to escape payment of interest on said sum from the 13th day of January, 1941, the date said land was taken by plaintiff, and this defendant denies that any person other than this defendant has any interest in the moneys for payment for said real estate.

5. This defendant denies that R. Newton McDowell and the Kansas City Title Insurance Company, a corporation, or either of them, have any right, title or interest in or to said sum as alleged in paragraph 5 of said motion, or to any other sum due this defendant as payment for said real estate.

6. The defendant, Edward J. Linnenbringer, further alleges that on the 30th day of November, 1940, he and his wife, Emma Linnenbringer, granted to plaintiff an option to purchase said real estate, which option was accepted by plaintiff on December 6th, 1940; that plaintiff took possession of said real estate on the 13th day of January, 1941;

that said contract fixed the value of the just compensation to which this defendant was entitled to as of the 13th day of January, 1941; that said contract further provided that in the event of condemnation said value should be fixed under a consent verdict; that thereafter on the 18th day of June, 1941, plaintiff filed the suit in condemnation referred to in plaintiff's motion and on said same day plaintiff filed its declaration of taking in said cause and deposited in the registry of this court the sum of $16,000.00 as the estimated just compensation for said real estate so taken; that the [fol. 43] following named persons and corporations were the only defendants named in said cause, to-wit: Edward J. Linnenbringer, Emma Linnenbringer, Elroy H. Linnenbringer, Darst Bottom Drainage and Protective District No. 2, a public corporation of St. Charles County, Missouri, the Collector of Revenue of St. Charles County, Missouri, and the County of St. Charles, State of Missouri; that Emma Linnenbringer, wife of defendant Edward J. Linnenbringer, died December 23rd, 1943 and her inchoate right of dower in said real estate was extinguished; Elroy H. Linnenbringer filed an answer in said cause disclaiming any interest in said real estate; that said St. Charles County has no right, title or interest of any kind in or to said real estate or any part thereof and that the liens of said Collector of St. Charles County for general taxes and of said Darst Bottom Drainage and Protective District No. 2 for drainage taxes have been satisfied as herein shown and they have no further claim of any kind on said real estate or in the fund which will be paid as just compensation for taking said land; that on or about the 11th day of December, 1941, the defendant Edward J. Linnenbringer was, under a stipulation filed in said cause, permitted to withdraw from the Registry of this court, out of said sum deposited therein by plaintiff, the sum of $14,400.00, and said sum so [withdraw] was paid as follows:

To William H. Bruns, Jr., Collector of Revenue of St. Charles County, Missouri, for general taxes due and payable for the year 1941, as per tax statement and claim filed in this cause, the sum of $63.85

To William H. Bruns, Jr., Collector of Revenue of St. Charles County, Missouri, installment tax due and payable in 1941 to Darst Bottom Drainage and Protective

District No. 2 as per statement and claim filed in this cause the sum of $21.68

To the Clerk of this court for the benefit of Darst Bottom Drainage and Protective District No. 2 and payable to said district in the years 1942, 1943, 1944 and 1945 in the sum of $21.86 per year, the sum of $87.44.

And to defendant Edward J. Linnenbringer the sum of $14,226.86

[fol. 44] That out of said sum of $16,000.00 deposited in the registry of this court, as aforesaid, there was withdrawn the sum of $14,400.00 as above shown, and that there remains in said registry the sum of $1,600.00; that no one except the defendant Edward J. Linnenbringer has any right, title or interest in or to said sum or to any other sum due on account of the taking of said real estate.

7. Defendant Edward J. Linnenbringer further alleges that plaintiff took possession of said real estate described in plaintiff's petition on or about January 13, 1941 and alleges that this defendant is entitled to judgment in said cause for the sum of $34,000.00 with interest on said sum at 6% per annum from the 13th day of January, 1941 to June 18, 1941, and interest on the sum of $34,000.00 less the sum of $16,000.00 deposited in the registry of this court on June 18, 1941, to-wit, the sum of $18,000.00 at 6% per annum from June 18, 1941 to the date said entire sum is paid to this defendant as his just compensation for his real estate taken in this proceeding.

8. Wherefore, defendant Edward J. Linnenbringer moves the court to enter judgment in accordance with the facts herein set forth and in favor of this defendant, for the amount with interest as set out in paragraph 7 above.

WM. WAYE, JR.
First National Bank Building
St. Charles, Missouri.

ROSCOE ANDERSON,
208 North Broadway
St. Louis (2), Missouri

W. R. GILBERT,
208 North Broadway
St. Louis (2), Missouri

[fol. 45] (List of Checks deposited in Registry of District Court to cover certain Lands in Weldon Spring Ordnance Project.)
(Filed May 17, 1945.)

In The United States District Court
Eastern District Of Missouri
Eastern Division

Weldon Spring Ordnance Project

Cases No. 767	— Deficiency —	$26,900.04	818 — Def. —		$114.00
765	— " —	7,028.20	817 — " —		8,140.00
766	— " —	22,365.00	820 — " —		19,193.00
763	— " —	3,125.00	822 — " —		6,760.00
764	— " —	22,791.00	824 — " —		4,770.00
771	— " —	6,170.00	823 — " —		13,992.00
772	— " —	660.00	854 — " —		6,100.00
777	— " —	5,855.00	877 — " —		3,725.00
778	— " —	2,935.20	865 — " —		567.00
779	— " —	3,967.83	866 — " —		7,510.00
780	— " —	2,000.00	863 — " —		932.50
781	— " —	875.00	873 — " —		7,457.20
782	— " —	5,792.00	872 — " —		6,900.00
783	— " —	5,700.00	858 — " —		3,443.00
784	— " —	4,368.00	860 — " —		8,040.00
785	— " —	34,250.00	859 — " —		16,480.00
786	— " —	2,630.18	862 — " —		2,200.00
796	— " —	19,694.00	879 — " —		1,440.00
805	— " —	21,511.25	875 — " —		5,729.00
812	— " —	6,080.00	876 — " —		7,695.00
810	— " —	110.00	856 — " —		4,300.00
813	— " —	4,428.75	868 — " —		1,380.00
814	— " —	7,283.00	869 — " —		3,697.00
797	— " —	3,825.00	960 — " —		48,500.00
806	— " —	2,940.00	978 — " —		14,132.00
808	— " —	11,140.00	985 — " —		1,240.00
811	— " —	5,435.00	988 — " —		21,374.25
834	— " —	4,878.00	984 — " —		1,500.00
841	— " —	8,670.00	999 — " —		2,140.00
833	— " —	2,150.00	1000 — " —		500.00
840	— " —	3,580.00	1001 — " —		2,500.00
832	— " —	760.00	1002 — " —		11,115.25
827	— " —	7,940.00	1003 — " —		29,297.00
843	— " —	4,620.00	979 — " —		7,120.00
830	— " —	1,200.00	981 — " —		25,000.00
829	— " —	312.00	980 — " —		16,312.50
839	— " —	4,860.00	989 — " —		3,100.00
838	— " —	2,440.00	986 — " —		2,600.00
844	— " —	1,433.36	987 — " —		18,000.00
835	— " —	6,960.00	992 — " —		933.00
826	— " —	3,760.00	993 — " —		3,617.00
852	— " —	17,460.00	994 — " —		1,100.00

853	"	850.00	995	"	16,000.00
774	"	1,563.00	997	"	20,400.00
798	"	8,260.00	991	"	1,750.00
803	"	4,100.00	1006	"	3,600.00
789	"	10,820.00	1010	"	32,804.45
792	"	9,775.74	1015	"	23,129.45
800	"	36,720.00	1014	"	450.00
790	"	8,440.00	1021	"	7,140.00
791	"	9,042.00	1019	"	12,174.00
793	"	5,100.00	1020	"	6,170.20
794	"	17,985.00	1648	"	1,670.00
804	"	14,780.00	1652	"	2,723.00
819	"	3,050.00			

$920,085.35

[fol. 46]

Check No.			
	8,051,506		$87,595.70
	8,051,507		48,500.00
	8,051,508		4,393.00
	8,051,509		115,932.50
	8,051,510		182,604.74
	8,051,511		85,468.10
	8,051,512		229,583.57
	8,051,513		7,028.20
	8,051,514		83,798.54
	8,051,515		22,365.00
	8,051,516		26,900.00
	8,051,517		22,791.00
	8,051,518		3,125.00

$920,085.35

of the Treasurer of the United States, in the sum of $920,085.35, to the order of the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, deposited by the plaintiff for the lands described in the petitions, the aforesaid sum of $920,085.35 being deposited by the plaintiff in the Registry of the Court herein as to the aforesaid lands, for the use and benefit of the person or persons entitled thereto, the same to be applied under orders of this Court.

HARRY C. BLANTON,
United States District Attorney.

Received the above mentioned checks and deposited same in the Registry of this Court, this 17th day of May, 1945.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.

[fol. 47]

Opinion of Court.

(Filed June 8, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
vs.
Certain Lands in St. Charles County, Missouri, Known as The Weldon Spring Area, Defendants.

No. 765; No. 767; No. 771;
No. 777; No. 781; No. 785;
No. 791; No. 797; No. 805;
No. 807; No. 810; No. 811;
No. 817; No. 827; No. 835;
No. 841; No. 865; No. 874;
No. 875; No. 877; No. 985;
No. 987; No. 991; No. 995;
No. 997; No. 1000; No. 1001;
No. 1010; No. 1015; No. 1021.

All of these cases, except Numbers 807 and 874, now come before this Court on motions filed in each by the Plaintiff, United States of America, for entry of judgment in the amount of the compensation fixed in certain option contracts, but without interest thereon, and certain countermotions by Defendants asking for judgment with interest on the principal amounts since the date of taking. Numbers 807 and 874 (Muschany and Andrews cases) are here on motions by the Plaintiff to delete interest from judgments already entered, but the issues therein presented differ only slightly. This opinion is to be considered as filed in and ruling all of the above numbered separate proceedings.

The lengthy history of this condemnation litigation is already adequately documented in the Reports and needs

no further recitation. The facts of the original proceedings appear in the contrary opinions of District Court Judges Davis and Collet, United States vs. Certain Land Situate in St. Charles County, Mo., et al., 46 F. Supp. 921, and United States vs. 94.68 acres of Land in St. Charles County, Mo., et al., 45 F. Supp. 1016; in the Eighth Circuit Court of Appeals opinion in United States vs. Muschany, 139 F. 2d, 661; and in the opinion of the Supreme Court of the United States in Muschany vs. United States, 89 L. Ed. 492. In addition, the facts [fol. 48] surrounding the present motions are ably stated in the opinion of Judge Hulen filed in Division No. 2 of this Court on the 4th day of May, 1945, covering identical motions in companion cases to those now before this division. The issues here presented differ in no respect from those decided by Judge Hulen and, with the above references to source materials where the facts may be found, the Court will state its views and holding on the issues presented, which, I deeply regret, are not in accord with those of my learned brother Hulen.

After careful consideration of the various submitted briefs of counsel, the real issues presented for decision appear to be four in number. First, the question is raised whether there is anything in the facts of these cases that makes them a particular type of condemnation proceeding to which that part of the Statute allowing interest to landowners does not apply; second, whether if in such a condemnation proceeding interest is ever allowable, these landowners have by any contract, election, waiver, stipulation or option done anything to waive, give up, or bar themselves from, a right that they might otherwise have: third, whether, if the landowners are entitled to interest, they are entitled to it from the date of the actual taking or only from the date of the filing of the declaration of taking: and, fourth, whether the original decrees entered only in the Andrews and Muschany cases (those appealed to the Supreme Court), which expressly provide for interest, are final and binding on the interest issue in those two cases and, also, binding as precedent or through special agreement of the Government in all the other cases. The Court will discuss the above issues seriatim.

[fol. 49] There is no dispute between the parties that the general rule is (absent a contract or statute evincing a contrary intent) that interest does not run against the United States upon claims or contracts even though there has been an unreasonable delay or default in the payment of the principal upon the part of the Government. Tilson vs. United States, 100 U. S. 43; United States vs. North America Company, 253 U. S. 330; Angarica vs. Bayard, 127 U. S. 251; United States vs. North Carolina, 136 U. S. 211; Smyth vs. United States, 302 U. S. 329. Likewise, there is no dispute that in ordinary condemnation proceedings an exception is made which Congress has by statute approved and codified. Title 40 U. S. Code, Section 258a; Seaboard Railway vs. United States, 261 U. S. 299; United States vs. Rogers, 255 U. S. 163. The parts of said Statute material here are:

"In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States.******

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount

finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall [fol. 50] have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency" (Emphasis the Court's)

The difference of opinion between the parties first arises on the question of whether the particular facts here cause these proceedings to be a type of condemnation proceeding to which that part of the statute relating to interest is inapplicable.

The Court is of the opinion that under the policy of Congress, as expressed by the above statute, and under the facts, there is no valid reason why these landowners should not receive the benefit of the statutory exception. It is true that the negotiations between the Government and the landowners originally resulted in option contracts. It is also true that those contracts provided for condemnation proceedings under certain restricted circumstances. Those facts, however, do not change the circumstances that there are now before this Court condemnation proceedings brought under the general condemnation statute and in no respect different from any other like proceedings except in the method of ascertaining the value of the land. These are not friendly condemnation proceedings for the purpose of clearing title but, as the long history of litigation prior to these motions will readily prove, they are as completely antagonistic and adversary actions as this Court has ever seen. These proceedings for condemnation were certainly not brought within the terms of the

[fol. 51] option contracts, since those options provide only for friendly proceedings "if for any reason the title to the land is not approved by the Attorney General." It is certain that no other type of condemnation proceeding was within the contemplation of the parties when the option contracts were entered into. The history of these cases shows that the Government brought these actions as straight adversary condemnation proceedings, in complete disregard of the option contracts, and that the entrance of those contracts into the issues was by way of equitable defense on the part of the landowners. Those option contracts have played a part, therefore, in these proceedings to the extent of fixing the worth of the land, but it would be completely erroneous to say that they in any way make these a different type of condemnation proceeding, or that those options have been [illegible] enforced in their entirety.

Such being the facts, no reason appears [illegible] face of the Statute why those landowners, different from any other landowners, should be divested of the right to interest on the deficiencies of their awards. The statute merely provides that "said compensation shall be ascertained and awarded in said proceeding and established by judgment". No distinction is made in the statute between different methods of ascertaining the compensation. Had the value of the land here been found by a jury, by commissioners, or by stipulation filed in the case, the statute in the absence of express waiver would make no distinction in regard to interest in any case where a deficiency in the deposit existed. Why, therefore, should there be any distinction because the value of the land was fixed by an agreement prior to suit between the parties, which agreement, it should be noted, was enforced against a recalcitrant Government on equitable principles?

[fol. 52] These landowners certainly come within the spirit of the statute and the intent of Congress. The history of the statute, as admitted by the parties, shows that its purpose was to grant interest not as interest, but as part of the compensation, i.e., to compensate for the loss of the use of the land, or the use of the value thereof in money, pendente lite, Seaboard Railway vs. United States,

supra; United States vs. Rogers, supra. The properties of these people were taken from them some time prior to the institution of these suits and only since submission of the present motions has the Government begun to deposit the full amounts due under the options. Thus, they have lost both the use of the land and the use of their money, and it was just such a situation as this that Congress intended to remedy by making the unusual exception to the rule that the United States pays no interest.

To say that this is a different type of condemnation proceeding pursuant to contract is to ignore the fact that the contracts never had been enforced in full and never will be. The original proceedings were not suits for specific performance of the contracts because, had they been, the result should have been the dismissal of these actions. On equitable principles the amount of compensation was fixed and charged against the United States under the terms of the options, but the United States itself has defaulted and still defaults on many of the terms of the contracts. For example, it has not—as the contracts provided—accepted deeds and paid the agreed purchase price upon the furnishing of satisfactory certificates of title. That it can and will never do. Neither has it brought condemnation proceedings for the sole reason assigned in the options for doing so. Nor has it, when bringing condemnation proceedings, followed the terms of the contracts, which provide that—

"The Government will proceed to acquire the land by condemnation proceedings instituted in the District Court [fol. 53] of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court." (Emphasis the Court's).

The requirement for a deposit upon the filing of the petition has certainly never been performed by the Government and never can be. The Government has made no offer to consent to a verdict and yet, through its Agents, contends that it simply wishes to go through with the original contract. That, it is manifest is impossible.

The essential error in the position of the Government lies in the assumption that the effect of the opinion of the Supreme Court was to convert these condemnation proceedings back to simply technical processes for the perfection of title in a proceeding contemplated by the parties and within the terms of their contracts; or, stated in another way, to convert these proceedings into an identity with an action in the Court of Claims for specific performance of a contract. This argument erroneously assumes, first, that the Supreme Court had the power and desire to restore the status quo ante; secondly, that by striving and prevailing for the prices promised them by their Government (in the adversary proceeding forced upon them) these landowners somehow bound themselves to all the concomitants of a discarded contract procedure and simply turned back the clock some years, thereby wiping out all that had intervened; and, thirdly, that there is something inconsistent in allowing the landowners their promised price as a matter of equity and also giving them the benefits arising solely by statute from a method of procedure which was forced upon them by the Government. The reasons why the prices provided in the options were compulsory imposed upon the Government by the Courts are that it was felt unconscionable and contrary to public interest to allow the Government, after accepting unusual benefits, to renege on its solemn word, and justice de- [fol. 54] manded that the landowners be given by way of ascertainment of value in condemnation that which they would have received had not the Government breached the contracts. In other words, there is actually nothing in the record of this case to show that the contracts per se were to be enforced. The Government was merely allowed to follow its chosen and elected course subject only to the duty to give the promised price. Any concomitants arising, however, from that elected course (i.e., interest) were not negatived or touched upon. Since, therefore, the Government has elected its remedy of condemnation, this Court can see no valid distinction between these proceedings and any others, unless there is something in the record to show that the landowners here have waived a right that they might have otherwise possessed. The Court will next address itself to that question.

The option contracts involved in these cases can be the only evidence of any such waivers or elections; and the Government here makes no contention that any circumstances other than those contracts constitute any such waivers or agreements. Thus, the question simply is, did the landowners by entering into such option contracts thereby stipulate and agree that no matter what happened the sums therein specified should be the total compensation for their lands? This Court, in answer to that question, can find nothing on the face of those option contracts, or from the surrounding circumstances, to indicate any such intention on the part of the landowners, or, for that matter, the Government. Had the contracts been performed, either by conveying or by a friendly condemnation proceeding, as provided in the options, the argument advanced by the Government might have strength. But, as it was, the parties were contracting for the sale of their land and they naturally made no provision for interest. Had [fol. 55] the contracts been performed in the manner contemplated on their face they would have needed no interest and been entitled to none. However, those contracts were not executed and never will be. How, therefore, can it be said that agreements to take no interest under the condemnation statutes can be found in contracts whose subject matter was something totally different than the proceeding that was subsequently brought? At the time the option contracts were executed the present proceedings were certainly not in the minds of any of the parties, and their possibility is no where reflected in those contracts. The landowners stated what they would take for their land in certain eventualities, which eventualities were the delivery of deeds in return for money (or, a friendly title clearing condemnation in a certain event). Neither of these eventualities ever occurred, but a totally different, completely unforseen and most unwelcome litigation was commenced. The general law of contracts would certainly forbid a holding which bound a contracting party by an instrument the subject matter of which was entirely different. The Government not the landowners, breached the contract, and that contract is dead and will never be performed except that the landowners, by reason of the final holding of the Supreme

Court of the United States, will be put in a monetary way in the same position as if the contracts had been executed. The question of interest in this adversary condemnation proceeding is not within the four corners of the contract at all, and is to be determined by operation of law.

Argument has been presented in behalf of the landowners that even if the option contracts could have some relevancy to the question of interest under the condemnation statute, that they have relevancy only to the extent that in condemnation they show an intent to fix the value of the land but not the total compensation therefor. This argument [fol. 56] is based on the contention that there is a difference in condemnation between the words "value" and "compensation", and that the word "compensation" includes not only the value found by the trier of the facts but also any additional items required by law, such as the statutory interest. A decision on this problem, in view of the preceding statements of this opinion is, of course, not necessary, since the Court has already decided that the contracts have no bearing at all on the interest question. However, the Court wishes to point out that it is in agreement with this contention insofar as it believes that if by any stretch of the imagination it can be held that the parties were contracting in contemplation of an adversary proceeding in condemnation, then they were contracting only to the extent that they were fixing the value of the land in the same manner that Commissioners or a Jury would fix the same, and without any stipulation to cover the entire condemnation proceeding (including matters like interest, which are handled by operation of the Statute). The option contracts, when they speak of the contemplated friendly condemnation to clear title, provide for "a consent verdict fixing the award at the agreed value". They further provide for an immediate deposit of that valuation. Certainly, under the terms of the Statute where the Government agrees to and does deposit an agreed valuation there can be no question of interest. With this in mind the landowners' agreement to a value would have constituted their entire compensation because of the contemporaneous agreement of the Government to instantaneously pay in that value and cut off the right to interest.

Nowhere, however, can words be found that show a contemplation by the landowners that they are fixing the possible total compensation that they would take in condemnation regardless of whether the Government, in accordance with its mutually dependent promise, paid in the money subject to the landowners right of user.

[fol. 57] It should be noted, before turning to a consideration of the remaining stated issues, that the Court has found, after consideration of the various authorities cited, no binding authority on the previously discussed issues, and feels that in its decision interpreting the Statute under the facts the court must and is at liberty to arrive at its conclusions independently. All of the authorities cited by the Government to the effect that interest is generally not allowable against the United States, except where contract or statute so provides, are of interest, but actually of no assistance to the Court in the cases at bar.

The only authorities relied on by the Plaintiff that the Court has found to even touch upon the propositions here are United States vs. 3.25 Acres of Land in Seneca County, New York, 53 F. Supp. 884, and United States vs. Certain Lands in St. Louis, 58 F. Supp. 305, both District Court cases, and the latter decided by Judge Duncan of this District. Although neither is in any way decisive, since their special applicability has been strongly urged, a statement of the Court's views on them is made necessary.

The Court believes that the issues involved in the case before Judge Duncan were not at all the same as those here presented and that that case is so [distginishable] as to be of no value as even influential authority. That suit was begun as an ordinary adversary condemnation, but while pending a proposition was made by the owner of the land for settlement of the case. A settlement was agreed upon, accepted, and a judgment rendered for the exact amount of the contract. A motion was filed by the landowners asking for interest from the time of the entry of judgment until payment, on the theory that the Government had unreasonably delayed the payment. Interest was denied by the Court. First, it should be noted that the interest question arose from a demand for interest after entry of judgment, and not before. Second, the contract, in

[fol. 58] the form of an accepted offer of settlement filed in the case, provided that—

"The consideration hereinabove set forth shall be the amount of the award to be decreed for all damages and compensation by reason of the taking of said lands by such judicial proceedings and we hereby agree that this offer to sell, if accepted, shall, without more, constitute a stipulation, which may be filed in said suit as final and binding evidence of the award to be made in such proceedings and paid into Court for the benefit of all persons entitled thereto."

Thus, when the contract was made, an adversary proceeding was not only in mind but was actually the subject matter of the contract. That contract was a compromise, and that with which they were dealing was well within the minds of the landowners. If they agreed to accept the sum named in the settlement for "all damages and compensation" they would certainly be presumed to include in their computations of what they would take not only the original value of the land but any other claims they might have had to that date against the Government, such as interest (or compensation for the deprivation of use pendente lite). L. C. 307, Judge Duncan states:

"The difficulty with defendant's position is that by its own action it removed itself from the provisions of the statute. If this statute were applicable here defendant would be entitled to interest on $35,000 from the date of taking on June 19, 1939, until the date of the payment, August 14, 1944, but defendant makes no such claim. On the contrary, it bases its claim upon the ground of unreasonable delay in the payment of the amount agreed upon, and for which judgment was entered. It could make no other claim in view of the clear, unambiguous statement in its offer that: * * * the amount of the award to be decreed for all damages and compensation by reason of the taking of said land * * *. (Emphasis supplied)

From this language it must be determined that the defendant's offer was a full and complete offer, not one fixing an amount as of the time of taking, but as of the time of the acceptance and payment."

From the above quotation it can be clearly seen that the [fol. 59] real basis of decision was a finding of fact that the landowners had voluntarily given up and waived any right they had, and that is just exactly what this Court finds that the landowners in the cases at bar did not do. There is no difference to be found in that opinion as to the law, there is simply a factual situation not here present. It should also be noted about that case, that there the landowners did not petition clearly for interest under the statute, but went outside of it relying on alleged unreasonable delay, and, as before noted, it is clearly the law that no matter how arbitrary or unreasonable the delay and how great the hardship imposed, the United States may not be forced to pay interest absent a statute or contract providing therefor. That case was decided on its facts, and the facts in the cases at bar are in no way identical.

The other District Court case, United States vs. Certain Lands in Seneca County, New York, supra, may be more in point, it is true, but still is essentially distinguishable from the cases at bar for the same reason as Judge Duncan's opinion. Although the exact fact situation present in that case is not made clear by the opinion, it should be noted that Judge Burke seemed to be of the very definite view that that proceeding was brought completely within the terms of the option contract, and not, as in the cases at bar, in derogation and denial of those contracts. The option provided, as here, for friendly condemnation to clear title and although the opinion does not show the Government's motive in bringing the matter to Court, surely it must be presumed, since Judge Burke seems to so imply, that the action was brought within the rights given by the contract. All through the opinion appears the assumption that a proceeding contemplated by the option had occurred and that, therefore, the contract should bind. [fol. 60] This is best illustrated by the very words of the Court, l. c. 885:

"By agreement of the parties, therefore, it was left to the determination of the United States, through its officers in charge of the matter, to determine, notwithstanding the prior acceptance of the option, whether the title was un-

satisfactory for purchase by deed. By express agreement the Government had the right, at its election, to acquire title by condemnation and the church agreed in that event to cooperate to that end and the option price was to constitute conclusive evidence of the true value of the whole property. When reasonably and fairly exercised, as it appears to have been in the light of the matters set forth in the motion papers, the determination to acquire title by condemnation is not open to question and when resorted to, the express agreement of the parties as to compensation must control. That agreement was that the option price 'shall be final and conclusive evidence of the true value of the whole of said property and of the proper award to be made in such proceedings'. The possibility of the Government electing to acquire title by condemnation was not an unforseen circumstance and in such event, that there would be some delay in the proceedings might reasonably have been inferred. The option, however, contained no provision for adding anything to the award to compensate for delay in the payment of compensation. The Court may not supply what the parties themselves have failed to include in the agreement." (Emphasis the Court's)

That being the situation, the case can give no assistance where, as here, the Government itself departs from the contract, and makes its performance impossible, and does not exercise any contract right, in the words of Judge Burke, "Reasonably and fairly".

Attempts have been made to show guiding principles in the Supreme Court opinion in Muschany vs. United States, supra. The Court, however, can find no guidance therefrom and is certain that any language of the Supreme Court that has been used by either of the parties to this suit to justify their conclusions is not pertinent, since it is only too clear that Supreme Court of the United States was in no manner addressing itself to the issues now raised by these motions.

[fol. 61] Since the submission and briefing of these motions this Court's attention has been directed by defendants to the decision of the United States Circuit Court of

Appeals for the Fifth Circuit in U. S. vs. Marion Baugh, et al., F. 2d. , decided May 4, 1945. As in Judge Duncan's opinion in US vs. Certain Lands in St. Louis, supra, the suit was commenced as an ordinary condemnation and a stipulation was subsequently filed. The Fifth Circuit held that the landowners were entitled to interest from the filing of the stipulation until deposit. US vs. Baugh, et al. is of interest not because it necessarily expressly rules the issues here, but because it contains thought closely allied to this Court's holding. The stipulations there waived hearing before commissioners, consented to decrees vesting title, and agreed that certain sums be adjudged as just compensation. They further read:

"The foregoing stipulation is made to expedite the vesting of title in the plaintiff, the United States of America, and the payment of just compensation for such lands to the owners thereof, and it is the purpose and intent hereof to vest in the Court, without any further proceeding any notice, full authority to close such action by final judgment and to disburse the funds in accordance therewith."

After the filing of these stipulations an eight months' delay ensued before deposit by the government, although possession had been taken when suit was commenced. Judge Waller discusses the effect of these stipulations, l.c. , and the quotation suffices to illustrate the analogous reasoning to this court's:

"In the present case the government did not take a deed from the landowner as in an outright purchase, but it acquired title and possession by condemnation. The stipulation merely had the effect of relieving the government from having to make proof as to what was just compensation and of running the risk of having an amount fixed which might be unsatisfactory. The stipulations eliminated controversies, but otherwise the condemnation suit proceeded to final judgment. There is no mention in the [fol. 62] stipulations that interest was, or was not, included. Just compensation in condemnation cases means just compensation at the time of taking of possession, and when the parties reduced to writing a stipulation fixing

just compensation there seems to be no reason to conclude that the landowner impliedly waived any legal right. In view of the several express waivers made in the writing it will not be presumed to have contained any implied waivers of substantial constitutional rights." (Emphasis the Court's)

Again, the learned Judge said, l.c.....:

"But the government failed to pay for seven or eight months thereafter, and there is neither proof nor presumption that the landowners intended to waive interest in the future, particularly for such an indefinite and unreasonable period, and such waiver cannot be read into the agreement. Their right to have interest is found in the Constitution and is neither found nor lost in the contract.

The Constitution no more permits the deprivation of money without just compensation than it does the deprivation of the use of land without just compensation." (Emphasis the Court's)

Although the facts are different, the case is sound authority for this Court's holding that where a contract fixes the value of the land, the presence of such contract does not affect the matter of interest, which is governed by operation of law.

It is further of interest to note that the Court in US vs. Baugh, states, l.c.

"The settled law of the land at the time a contract is made is a part of the contract and must be read into it." This is in direct answer to the plaintiff's underlying argument in the cases at bar that the contract upon which an award is based must provide for interest for it to be allowable. It would seem, however, that the rule is, to the contrary, that a contract is presumably made in view of the law existing (which gives a right to interest) and if this presumption is to be altered, the contract must so provide.

[fol. 63] The third issue, as above stated, is whether, having decided that the landowners are entitled to interest, they are entitled to interest from the date of actual taking of the land, or from the date of the filing of the declaration

of taking in this Court. Here, it is the Court's opinion, that the latter date must govern. Although it is true that the Government went into possession of these lands sometime prior to filing of these condemnation suits, and withheld the use of the land from the landowners during that intervening period, it is also true that the right in the landowners to interest now is bottomed upon the Statute. This Statute is in derogation of the general rule that no interest is allowable against the sovereign, and strict conformity must, therefore, be required in the application of the exception to these cases. For any loss of the use of their lands after the actual taking but prior to the filing of the declaration of taking, the landowners right lies outside of the condemnation laws and in contract, and they must, therefore, go uncompensated in the same manner that persons dealing with the sovereign in matters other than condemnation receive no interest.

Finally, considering the fourth issue, it has been argued that since the original decrees, entered in the Muschany and the Andrews cases (those appealed to the Supreme Court, provided a judgment for the principal amount of the options plus interest, and since those decrees have been affirmed by the Supreme Court of the United States, that the question of interest is res adjudicata in these cases at least. Additionally, it is argued in this line, that those decrees form influential or binding precedent for all of the other cases and that, further, because of some commitment by counsel for the Government the landowners in the other cases are en- [fol. 64] titled to the same treatment in all respects as Muschany and Andrews.

The question of whether interest is res adjudicata in the Andrews and Muschany cases depends essentially on whether those decrees were, in the form written, affirmed by the Supreme Court, or whether they were made subject to revision or re-entry. The Circuit Court of Appeals, of course, reversed the findings and decrees in those cases, which would have the effect of setting the same aside. The Supreme Court, however, reversed the Court of Appeals and in its mandate ordered that the Muschany and Andrews

cases be remanded to the District Court for further proceedings in accordance with its opinion. Although it is true that the Supreme Court did not expressly state that the decrees in the form written were affirmed, it appears that such is the undoubted effect. A reversal of the Court of Appeals must, of necessity, reinstate the rule of the District Court if nothing more is done. The order of the Supreme Court, remanding to the District Court for further proceedings in accordance with its opinion, can only mean that since the opinion was in accord with the District Court that that latter court should proceed as it had been proceeding prior to appeal. Although the language of the Supreme Court's mandate may not be expressly an affirmance, it cannot be interpreted in any other way, since there are no further proceedings to be had other than execution of the judgments previously entered.

"The Court recognizes, however, that the issue of interest was not raised before either of the appellate courts, and that neither opinion adjudicates that question. However, that is not the fault of the landowners since the original decrees gave them interest, and those decrees became final unless attacked and set aside on appeal. In view of the Court's [fol. 65] holding on the other issues previously discussed in this opinion, a decision of the present issue is, of course, not necessary in order to hold with the landowners. However, the Court feels that so far as the Andrews and Muschany cases are concerned justice requires that the landowners be given the benefit of the Government's failure to seek reversal of the decrees already entered in their favor. The Government, it appears to this Court, participated in an appeal through two courts, alleging error committed by this court. The question of interest was squarely present in the record and the Government could have attacked that during the same appeals. Now, however, having been defeated on the question of the validity of the option contracts the Government seeks to pick another point in the original decrees which it believes erroneous and attack the landowners on that. Such procedure certainly is violative of all tenets of appellate procedure.

As for the effect of this upon the other cases in which no decrees were entered, it certainly cannot be said that the opinions of the Supreme Court in the Muschany and An-

drews cases form any precedent on the interest question. The issue of the interest awards not having been attacked on appeal, and the opinions of both the Court of Appeals and the Supreme Court being absolutely silent thereon, it would, indeed, be erroneous to say that because the Government neglected to allege an error and obtain a decision on the interest provisions in the Muschany and Andrews decrees that they have thereby made binding or even influential law for other cases.

However, aside from that question, there is the suggested commitment of the Government, which would cause all other cases to follow the exact result of the Andrews and Muschany cases. This Court feels that in all probability good conscience might dictate that all landowners should be given the same treatment as those in the test cases, since they [fol. 66] doubtless failed to press their cases to judgment in reliance on an assumption that all cases would result identically. However, the Court further feels that no agreement by the Government intended to cover the question of interest has been shown and is, therefore, not disposed to hold that the Government is bound in that regard. Adequate reasons have been stated elsewhere in this opinion for allowing interest to all landowners, and the Court, therefore, must rule this issue as to all landowners other than Muschany and Andrews against the defendants.

In conclusion, therefore, the Court is of the opinion that the landowners are entitled to entry of judgments which shall include interest upon the deficiencies in their awards from the dates of the filing of the declarations of taking in these cases. The Court is duly appreciative of the position of the Government and the vigilance of its officers in protecting its rights. Great skill and diligence has been exercised by those agents, and the Court believes that their efforts were certainly not unreasonable in light of the contrary opinions arrived at by the various jurists to whom the issues have so far been presented. However, the Court feels that the landowners, within the spirit of the Fifth Amendment of the Constitution of the United States, are entitled to a just compensation for their lands, and that that includes the right to receive as additional compensation the interest granted by the Statute for their loss of the use of their land, or the use of their money, during the long period when the

officers of the Government were attempting to diminish the amounts to be paid to them. As already stated, it appears to this Court that these landowners so clearly come within the class intended by Congress to be benefited by the [fol. 67] Statute, that, although the Government's earnest attempts to obtain reversals were in the best of faith, the landowner should not be made to suffer because of those attempts.

Wherefore, the Court directs that in accordance with this opinion drafts of judgments carrying interest on the undeposited deficiencies from the filing of declarations of taking be presented in all of the above styled cases, except the Muschany and Andrews cases in which decrees have already been entered, and that, also orders ruling the numerous motions and counter-motions be supplied. Upon submission for approval and settlement of the same appropriate orders and decrees will be entered.

GEO. H. MOORE,
United States District Judge.

Dated this 8th day of June, 1945.

[fol. 68] Findings And Judgment.

(Filed July 2, 1945.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 987. vs. At Law.
160 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 11-A, and Edward J. Linnenbringer, Et Al., Defendants.

Tract No. 11-A.

Now on this day the Court having heretofore heard a motion filed by plaintiff for judgment for plaintiff in condemnation of the land described in plaintiff's petition filed in this cause, and for defendants fixing the compensation to be paid by plaintiff to the defendants in the sum of $34,000.00, the price agreed upon in the option contract, referred to in said motion, without interest, and the answer to said mo-

tion and the countermotion of defendants for judgment against plaintiff for said sum with interest, and evidence having been heard and arguments of counsel having been made, and said motions having been taken under advisement, and the court being now fully and sufficiently advised in the premises doth find that the plaintiff instituted this proceeding on the 18th day of June, 1941 by the filing of its petition in condemnation on said date against the defendants named in said petition, to condemn the lands in said petition and hereinafter described, as in such cases made and provided for by the laws of the United States of America.

That on said same day, to-wit, June 18th, 1941, plaintiff filed a declaration of taking of the real estate described in plaintiff's petition, as provided for by Title 40, Section 258a, of the United States Code.

That thereafter all of the defendants named in said petition were duly served with process as required by law, or duly entered their appearance in said cause, and that this court has jurisdiction of the subject matter of this cause and all of the parties thereto.

That prior to the filing of plaintiff's petition herein, and [fol. 69] prior to the filing of said declaration of taking, defendant Ed J. Linnenbringer, gave to plaintiff an option to purchase said real estate for the sum of $34,000.00, which option was dated the 30th day of November, 1940, and which option was thereafter accepted by plaintiff on the 6th day of December, 1940; that said option contract was set out in full in the answer filed by defendant Edward J. Linnenbringer and Emma Linnenbringer to the petition filed by plaintiff in this cause.

That, upon the acceptance by plaintiff of said option contract, possession of said land, hereinafter described, was taken by and has ever since been in plaintiff, United States of America.

That, since the institution of this proceeding and the filing of said declaration, the Supreme Court of the United States has held binding on the parties to this cause, insofar as concerns the worth or value of the land at the time of the taking by the United States of America, an option contract

for the sale of land, the provisions of which are the same as the option contract aforesaid, except as to dates, the names of the vendors, the description of the property and the sale price of said land; that under the aforesaid decision of the Supreme Court of the United States and the provisions of said option contract, the said sum of $34,000.00 was and is the agreed value or worth of the land, hereinafter described, at the time of the taking of said land by plaintiff, and the defendants became and were entitled to have the value or worth of said land fixed in this proceeding at said agreed value as of the date of taking thereof.

That on the 18th day of June, 1941, plaintiff filed in this cause the aforesaid declaration of taking of the land therein and hereinafter described, and on said day caused to be entered of record in this cause a judgment of taking on said declaration of taking, whereby the free simple title to said land became fully vested in the United States of America, plaintiff herein, and the title to and possession of said land was then and there, and has ever since been in the plaintiff, United States of America, and none of the defendants have since said time had any right, title or interest in or to the same.

[fol. 70] That at the time of the filing of said declaration of taking on June 18th, 1941, there was deposited in the registry of this court the sum of $16,000.00 as the then estimated compensation stated in said declaration of taking for the appropriation and taking by plaintiff of the fee simple title to the land in said declaration of taking, and hereinafter described, but that said deposit was erroneous and insufficient in amount in that the same failed to equal said agreed value or worth of said land as of the date of taking and appropriation thereof by plaintiff.

That on the 17th day of May, 1945 there was deposited in the registry of this court by plaintiff an additional sum of $18,000.00 as additional compensation for the taking and appropriation by plaintiff of the fee simple title to the land in said declaration of taking and hereinafter described.

That the sum total of the combined deposits heretofore made by plaintiff into the registry of this court in this cause were and are erroneous and insufficient in amount and did not and do not constitute the just compensation for

the taking of said land hereinafter described, in that plaintiff in making said deposit on May 17th, 1945 failed to include therein interest on said sum of $18,000.00 which plaintiff had heretofore withheld from the registry of the court as aforesaid, at the rate of 6% per annum from the time of the filing of said declaration of taking, to-wit, the 18th day of June, 1941 until said 17th day of May, 1945, which interest constitutes a part of the just compensation required to be paid by plaintiff for the taking and appropriation by it of the lands hereinafter described, and that defendants are entitled to have the same paid by plaintiff into the registry of the court.

That plaintiff's petition and the proceedings in this cause set forth a cause of action for the condemnation, appropriation and acquisition by plaintiff, by proceedings in condemnation, of the fee simple title to the land hereinafter described, which land was and is necessary to provide for the establishment of an ordnance plant for the national defense of the United States of America and for other military uses incidental thereto in connection with the Weldon [fol. 71] Springs Ordnance Plant; that at the time of the filing of said declaration of taking herein, no person other than the defendants named in plaintiff's petition had any right, title or interest in or to the lands therein and in plaintiff's petition and hereinafter described, or any part thereof; that the awarding to plaintiff in this condemnation proceeding of a judgment in condemnation will confirm and perfect in plaintiff, finally and completely, the fee simple title to said land, in conformity with the laws of the United States of America.

That the land described in plaintiff's petition is the land described in said declaration of taking, referred to herein, and is described as follows, to-wit:

Part of Survey No. 476, Township 45 North, Range 2 East, described as follows: Beginning at a point on the east line of said Survey being the intersection of said east line with the middle line of the public road leading through said Survey, a rock; thence with said east line, South 22° degrees West 10 chains, and 25 links to the middle line of Femme Osage Creek; thence following the meanders of the middle line of said creek up the same to

its intersection with the boundary line of the first tract described in deed from the grantor herein to Joseph G. Tyler, of even date herewith; thence North to corner a rock on west bank of Spring Branch at its confluence with said creek; thence North 26½ degrees West 34 chains and 22 links to corner, a rock in center of said public road; thence following the meanders of said road as follows; North 58½ degrees East 8 chains; thence North 32 degrees East 5 chains 50 links; thence North 63 degrees East 3 chains 50 links to West Bank of Little Femme Osage Creek; thence North 28 degrees East 85 links to Elm tree 15 inches in diameter on opposite side of said creek; thence same course (North 28 degrees East) 4 chains 15 links; thence North 73 degrees East 9 chains; thence South 65¾ degrees East 9 chains; thence North 74¾ degrees East 6 chains 50 links; thence North 37½ degrees East 3 chains; thence South 59 degrees East 9 chains; thence South 80 degrees East 5 chains; thence North 77 degrees East 3 chains; thence North 63½ degrees East 6 chains 14 links; to corner a rock in said Road, the place of beginning, this land situated in St. Charles County, Missouri, and containing 160 acres, more or less.

That plaintiffs said motion for judgment should be sustained in part but should be denied in so far as plaintiff thereby seeks to avoid the payment of any interest as a part of the just compensation required to be paid by it for the taking and appropriation of said land.

That the aforesaid countermotion should be sustained to the extent that defendant seeks to have judgment entered fixing the compensation to be paid by plaintiff for the taking of said land at $34,000.00, plus interest at 6% per annum on the sum of $18,000.00 from June 18th, 1941 until the date on which said sum was paid into the regis-
[fol. 72] try of this court, to-wit, May 17th, 1945, and to have said interest added as a part of the just compensation to which defendants are entitled, and to have said sum paid into the registry of this court in addition to the amounts already paid into said registry.

It Is Therefore, Ordered, Adjudged and Decreed by the Court that

(1) Plaintiff, United States of America, by virtue of this proceeding is awarded judgment in condemnation against the said land in plaintiffs petition and hereinabove described, for the purposes herein defined and specified and against the defendants herein, and each and all of them, jointly and severally, as their title and rights may appear. And that the title in fee simple to said premises, subject to all existing highways and public utility easements but including the fee underlying such existing easements, is vested in the plaintiff, United States of America, and has been vested in plaintiff, United States of America, since the filing of said declaration of taking, and the defendants, and each and all of them, jointly and severally, are divested of any and all right, title, interest and claim of every kind and description in or to the land above described.

(2) That in accordance with the option contract, hereinbefore referred to, the agreed value or worth of said land as of the date of the filing of said declaration of taking herein, is hereby fixed at the sum of $34,000.00, plus interest on $18,000.00 of said sum at the rate of 6% per annum from the 18th day of June 1941 until the 17th day of May, 1945 as the full just compensation to which the owners of said land are entitled in this cause for the taking and appropriation of said land by plaintiff.

(3) That plaintiff shall forthwith pay into the registry of this court the sum of $4,230.00, being the amount of interest at the rate of 6% per annum on said sum of $18,000.00 from the 18th day of June, 1941 to the 17th day of May, 1945 as that part of the just compensation which the owners of the land hereinabove described are entitled to for the taking and appropriation thereof by plaintiff and which has not been heretofore deposited in the registry of this court by plaintiff, which sum of $4,230.00, together with said sum of $34,000.00, heretofore deposited by plaintiff in the registry of this court, shall [fol. 73] repose in the registry of this court for the use and benefit of the owners of said land and all others, if any, who may claim and be entitled to an interest therein by and through said owners, and for disposition in the manner and proportion as this court shall hereafter order, adjudge and decree.

(4) That this cause shall be held open for entry of such other and further orders and decrees as may be meet and just in the premises.

Dated this 2nd day of July, 1945.

GEO. H. MOORE, Judge.

Endorsed; Filed July 1, 1945, Jas. J. O'Connor, Clerk.

[fol. 74] (Motion of Plaintiff for New Trial.)

(Filed July 7, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial for the following reasons:

1. The Court erred in holding that this is an adversary condemnation proceeding;

2. The Court erred in not holding that this is a friendly condemnation proceeding according to the terms and provisions of the option-contract;

3. The Court erred in not holding that the filing of the equitable answer by the property owners converted this condemnation proceeding into an equitable action for the enforcement of the option-contract;

4. The Court erred in holding that this condemnation proceeding differs in no respect from any other condemnation proceeding except in the method of ascertaining the value of the land;

5. The Court erred in not holding that the equitable answer filed by the property owners in this case and the decision of the Supreme Court of the United States upholding the validity of the option-contract and the allegations of the equitable answer took the case out of the operation of the Declaration of Taking part of this condemnation proceeding;

[fol. 75] 6. The Court erred in holding that there was an ascertainment of the value of the land in this proceeding, for it has never been ascertained by this Court nor by any Appellate Court;

7. The Court erred in not holding that the compensation was not ascertained in this proceeding but that on the contrary it was fixed by the option-contract and the opinion of the Supreme Court of the United States holding such option-contract to be valid and binding upon the plaintiff;

8. The Court erred in its construction of the option-contract;

9. The Court erred in holding that the amount mentioned in the option-contract was the fair market value of the land involved in this case at the time of the filing of the Declaration of Taking in this case;

10. The Court erred in not holding that the sum mentioned in the option-contract is the full compensation to which the property owners are entitled in this proceeding;

11. The Court erred in its definition as to what constitutes just compensation;

12. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty to be paid by the plaintiff for its failure to perform the conditions of the option-contract immediately after its acceptance by the Government;

13. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty against the Government for litigating the validity of the option-contract;

14. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty for the Government's delay in the payment of the amount mentioned in the option-contract when such delay was caused by the vigilance and diligence of plaintiff's Officers and Attorneys in litigating the validity of the option-contract, and with the acquiescence of the defendant property owners;

[fol. 76] 15. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty without citing some statute authorizing such penalty;

16. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to promptly perform and fulfill the provisions and conditions of the option-contract;

17. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to fully and completely perform and fulfill the provisions and conditions of the option-contract;

18. The Court erred in its construction of the opinion of the Supreme Court of the United States in theAndrews and Muschany cases;

19. The Court erred in not holding that the Supreme Court of the United States held that the amount mentioned in the option-contract was full and complete compensation when the Supreme Court said:

"The offer was to sell to the Government at a fixed, definite price. The Government when it accepted this offer, agreed to pay this set amount and no more. The contract contains no provision allowing adjustment of price based on possible future indeterminate expenses. . . . . The Government knew the total cost when it became bound on the contract." (emphasis added)

20. The Court erred in holding that the burden of proof is upon the Government to show the absence of any contract obligation to pay interest or any statute providing for interest;

21. The Court erred in not holding that the burden of proof is upon the property owners to point out the exact provision of the contract providing for interest or to point out the exact provision of the statute providing for interest and a full compliance by the property owners with such statute;

[fol. 77] 22. The Court erred in allowing interest upon any part of the amount mentioned in the option-contract and for any period of time;

23. The decision of the judgment now entered is contrary to the views of the Court when the question of the

option was first presented to the Court in the Muschany and Andrews cases when the District Courts held in the Findings of Fact and Conclusions of Law that the property owners were entitled to recover only the principal amount named in the option without interest;

24. That as the Supreme Court, the Court of Appeals and the District Court all held in passing on the McDowell option that the amount included therein included not only the value of the land but compensation to the title company, compensation to McDowell by way of commission, and other expenses, to now allow interest on the entire sum to the property owner would be to allow him interest on not only the value of his land but also on other items which do not belong to him, but which, in truth and in fact, are being paid by the Government and not by the property owners to the title company and to McDowell;

25. That by including all of these elements in the amount named in the option, as well as the value of the land, the parties conclusively show that they were considering the amount of the option to be the total and entire amount to be paid by the Government as full compensation for the land and the other elements named therein, and further show that it was the intention of the parties that that amount and no additions thereto by way of interest was to be paid by the Government;

26. That the Court erred in holding that the amount named in the option represented the value of the land in view of the holding of the Supreme Court that it did not represent that amount at all, but that it represented the agreed purchase price, and in view of the fact that the option contract itself repeatedly refers to it as the agreed purchase price and not value;

27. That the position of the land owners in asking for interest under the Declaration of Taking Statute is inconsistent with their prior position heretofore asserted that they were entitled to have the option contract enforced as an option contract and that said contract not calling for interest, having failed to provide for the payment of interest, does not now entitle the landowners to interest in addition to the principal amount named therein;

28. The Court erred in finding that, upon the acceptance by the plaintiff of the said option-contract the possession of the land involved herein was taken by, and has ever since been in the plaintiff, the United States of America, because there was no evidence to sustain the said finding of fact;

29. The Court erred in not holding that the right to immediate possession of the land was included in the consideration mentioned in the option-contract and that such right of immediate possession was contracted for in the said option-contract and that the payment of the consideration mentioned in the option-contract is full payment for the land herein involved and for the right to immediate possession thereof obtained by the plaintiff under such option-contract;

30. The Court erred in holding that there was a taking under the Declaration of Taking filed in this cause such as contemplated by the Declaration of Taking Statute because the right to possession of the property had theretofore been contracted for under the terms and provisions of the option-contract;

31. The Court erred in holding that the property owners are entitled to interest under the provisions of the Declaration of Taking Statute because there was no taking under the Declaration of Taking which could authorize the allowance of interest under such statute;

[fol. 79] 32. The Court erred in holding that there was an ascertainment of just compensation in this proceeding, such as is mentioned and contemplated in the Declaration of Taking Statute, in order to warrant the inclusion, as part of the just compensation awarded, of interest at the rate of 6% per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment, or upon such part of the amount finally awarded as was not deposited contemporaneously with the Declaration of Taking;

33. The Court erred in holding that the two deposits made in this case, the first with the Declaration of Taking and the second on May 17, 1945 were erroneous and insufficient in that they failed to include any interest;

34. The Court erred in its judgment and decree entered in this cause by adding interest at the rate of 6% per annum upon the deficiency or upon the difference between the amount deposited with the Declaration of Taking and the amount mentioned in the option-contract;

35. The Court erred in its judgment and decree entered in this cause by including interest at the rate of 6% per annum from the date of the Declaration of Taking in this cause to May 17, 1945 upon the amount deposited in the Registry of this Court on the said 17th day of May, 1945;

36. The Court erred in its judgment and decree entered in this cause by requiring the plaintiff to pay into the Registry of the Court forthwith a sum of money equivalent to 6% interest on the sum deposited in the Registry of this Court on May 17, 1945 from the date of the Declaration of Taking in this case to the date of said deposit on May 17, 1945 as a part of the just compensation to which the defendants are entitled for the taking of the lands involved in this cause;

[fol. 80] 37. The Court erred in its findings and in its judgment and decree in the computation of the amount of the interest adjudged to the defendants upon the deficiency from the date of the Declaration of Taking to May 17, 1945;

38. The Findings and Judgment entered in this cause are contrary to and against the evidence under the law, are contrary to and against the law under the evidence and are contrary to and against the law and the evidence;

Wherefore, Plaintiff moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial herein.

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 7th day of July, 1945.

[fol. 80a] (Docket Entry of Submission and Overruling of Motion of Plaintiff for New Trial.)

November 27, 1945.

Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defts. and overruled.

[fol. 81] Statement of Points to be Relied Upon on Appeal.

(Filed December 7, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 987. vs. At Law.
160 Acres of land, more or less, situate in St. Charles County, State of Missouri, known as Tract No. 11-A, and Edward J. Linnenbringer, et al., Defendants.

The United States of America, appellant in the above-entitled case, states that the following points will be relied upon on the appeal:

1. The District Court erred in denying the plaintiff's Motion for Judgment Fixing Compensation in the Amount of the Option Contract Price, without interest.

2. The District Court erred in entering judgment with interest on $18,000.00, the difference between $34,000.00, the amount of the option contract price, and $16,000.00, the sum deposited with the Declaration of Taking, from June 18, 1941, the date of the filing of the Declaration of Taking, to May 17, 1945, the date of the deposit in Court of such difference.

3. The District Court erred in overruling plaintiff's motion for a new trial.

Respectfully submitted,

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant U. S. Attorney.

Copy mailed to opposing counsel this 7th day of December, 1945.

HARRY C. BLANTON,
U. S. Attorney.

[fol. 82] Designation of the Record on Appeal.

(Filed December 7, 1945.)

United States of America, Appellant in the above entitled cause, designates for inclusion in the Transcript of the Record on Appeal the pleadings, proceedings and evidence as follows:

	Filed
(1) Petition in Condemnation as amended October 9, 1941 and June 1, 1942	June 18, 1941
(2) Declaration of Taking in Cause No. 979, omitting therefrom all names from the caption except the defendant Edward J. Linnenbringer and omitting from the paragraph describing the parcels of land in said Declaration all parcels except Tract No. 11-A	June 16, 1941
(3) Order and Judgment vesting title in Plaintiff as to Tract No. 11-A and Order of Immediate Possession	June 18, 1941
(4) Order directing the transfer of the sum of $16,000.00 from Cause No. 979 to this cause for the use and benefit of the defendants in this cause	June 18, 1941
(5) Answer of defendants Edward J. Linnenbringer and Emma Linnenbringer to Plaintiff's petition	July 23, 1941

(6) Answer of defendant Elroy H. Linnenbringer to Plaintiff's petition — July 29, 1941

(7) Motion of Plaintiff for Judgment in Condemnation and Judgment for defendants fixing compensation by option-contract — April 6, 1945

[fol. 83]

(8) Order setting for hearing on May 7, 1945 the Motion of Plaintiff for Judgment in Condemnation — April 6, 1945

(9) Answer of defendants to Plaintiff's Motion for judgment in condemnation and fixing compensation by option-contract and Motion of defendants for Judgment — April 26, 1945

(10) Receipt of the Clerk for $18,000.00 paid into the Registry of the Court — May 17, 1945

(11) Memorandum Opinion of the Court finding issues in favor of defendants and against the Plaintiff — June 8, 1945

(12) Findings and Judgment — July 2, 1945

(13) Plaintiff's motion for New Trial — July 7, 1945

(14) Docket entry of November 21, 1945 overruling Plaintiff's Motion for a new trial

(15) Plaintiff's Notice of Appeal — November 23, 1945

(16) Appellant's Statement of Points

(17) Clerk's docket entries

(18) This designation of the record

(19) All other pleadings and documents filed in connection with this appeal.

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

Copy mailed to opposing counsel this 7th day of December, 1945.

HARRY C. BLANTON,
United States Attorney.

[fol. 84] Clerk's Certificate.

United States of America,
Eastern Division of the
Eastern Judicial District
of Missouri.—ss.:

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify the above and foregoing to be a full, true and complete transcript (except in so far as the same is restricted by the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 987, wherein the United States of America is plaintiff-appellant and 160 Acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 11-A, and Edward J. Linnenbringer, et al., are defendants-appellees, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, State of Missouri, this 21st day of December, in the year of our Lord, Nineteen Hundred and Forty-five.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.
By John J. Jarvis,
Deputy Clerk.

Filed Dec. 21, 1945. E. E. Koch, Clerk.

[fol. 1] Notice of Appeal.

(Filed November 23, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 997. vs. At Law.
215.494 Acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al.. Defendants.

Notice is hereby given that the United States of America, Plaintiff in the above entitled cause, hereby appeals to the Circuit Court of Appeals for the Eighth Circuit from the final Judgment entered in this cause on the 30th day of June, 1945.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 23rd day of November, 1945.

[fol. 2] Docket entry showing filing of notice of appeal and mailing copy of such notice to attorney for defendant.

(November 23, 1945.)

Notice of appeal of plaintiff to the United States Circuit Court of Appeals, 8th Circuit from final judgment entered herein June 30, 1945, filed by United States Attorney, and copy of aforesaid notice forthwith mailed by the Clerk of the Court to William H. Allen, Esq., atty. of record for defts. Dennis B. Pitman, et al.

[fol. 3] Clerk's Docket Entries of Case No. 997.)

United States Of America, Plaintiff,
Docket No. 997. vs. At Law.
215.494 Acres of land, more or less, situate in St. Charles County, State Of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., Defendants.

6-19-41 Motion of plaintiff for leave to file petition in condemnation, for issuance of summons, etc., filed, presented and granted in order filed and entered; petition in condemnation filed and summons issued directed to defendants, returnable August 4, 1941; on oral motion of U. S. Attorney, order and judgment filed and entered on Declaration of Taking filed in Cause No. 979 on June 16, 1941, vesting fee simple title in plaintiff as to lands sought to be condemned herein and providing for immediate delivery of possession to plaintiff; order filed and entered directing notice be given defendants of judgment herein on Declaration of Taking and of requirements for delivery of possession to plaintiff; order filed and entered directing transfer of the sum of $14,600 of fund deposited in Registry under Declaration of Taking filed in Cause 979 to the use and benefit of persons entitled thereto as to Tract No. 18-A, herein.

7-29-41 Order filed and entered continuing cause to September 15, 1941.

8- 4-41 Upon oral application, defendant Dennis B. Pitman granted 30 days from and after August 4, 1941, within which to answer herein.

8- 4-41 Order filed and entered continuing cause to September 15, 1941.

8- 4-41 Marshal's Return as to service of summons filed (Executed)

9- 3-41 Separate answer of defendants Dennis B. and May Dell Pitman to plaintiff's petition filed.

9- 6-41 Motion of plaintiff for leave to amend petition by dismissing as to defendant George J. Chris-

tisen and to correct the name of certain defendant to read "S. Brooks Remington" and for issuance of summons to such defendant, returnable September 25, 1941, filed and presented, and granted in order filed and entered.

9-15-41 On motion of U. S. Attorney, order filed and entered continuing case to September 25, 1941. Division No. 1

9-25-41 On motion of U. S. Attorney, order filed and entered continuing cause to October 14, 1941.

9-25-41 Marshal's Return of service to summons filed (Executed)

9- 3-41 Separate answer of defendants Dennis B. and May Dell Pitman to plaintiff's petition filed.

9- 6-41 Motion of plaintiff for leave to amend petition by dismissing as to defendant George J. Christisen and to correct the name of certain defendant to read "S. Brooks Remington" and for issuance of summons to such defendant, returnable September 25, 1941, filed and presented, and granted in order filed and entered.

9-15-41 On motion of U. S. Attorney, order filed and entered continuing case to September 25, 1941. Division No. 1.

9-25-41 On motion of U. S. Attorney, order filed and entered continuing cause to October 14, 1941.

9-25-41 Marshal's Return of service to summons filed (Executed)

[fol. 4] 10-14-41 On oral motion of U. S. Attorney order filed and entered continuing case to January 7, 1942.

10-20-41 On motion of plaintiff filed and presented, order filed and entered granting plaintiff leave to amend petition relative to land description etc., and to amend court records as to caption of cause relative to acreage of land sought to be condemned, herein.

1- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to March 9, 1942.

3- 9-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to June 9, 1942.

6- 9-42 Upon oral motion of U. S. Attorney, order filed and entered continuing cause to September 9, 1942.

9- 9-42 On oral motion of U. S. Attorney, order filed and entered continuing case to December 9, 1942.

10- 7-42 On motion of plaintiff filed and presented, order filed and entered directing all parties having or claiming any interest in and to award as to Tract No. 18-A to file intervening petitions setting up their respective claims by October 21, 1942 and setting such petitions so filed for hearing on October 23, 1942.

10- 8-42 Affidavit as to mailing of notice to defendants to file intervening petitions for amount deposited by plaintiff in Registry under Declaration of Taking, and of date set for hearing same, filed by plaintiff.

10-20-42 Clerk's Return to posted notice filed.

10-23-42 On stipulation between plaintiff and defendants, Dennis B. Pitman, et al., filed and presented, order for provisional disbursement from Registry of estimated compensation herein filed and entered.

12- 7-42 On oral motion of U. S. Attorney, order filed and entered continuing cause to January 14, 1943.

1-14-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to April 14, 1943.

4-14-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to October 14, 1943.

10-14-43 On oral motion of U. S. Attorney, order filed and entered continuing cause to February 14, 1944.

2-14-44 On oral motion of U. S. Attorney, order filed continuing cause to May 15, 1944.

5-15-44 On oral motion of U. S. Attorney, order filed continuing cause to Nov. 4, 1944.

[fol. 5] 11- 4-44 On oral motion of U. S. Attorney, order filed continuing cause to Feb. 5, 1945.

2- 5-45 On oral motion of U. S. Attorney, order filed continuing cause to May 3, 1945.

4-17-45 Claim of plaintiff in its own behalf and for Collector of Internal Revenue for Sixth Collection District of Missouri asserted by reason of certain lien, interest and penalties thereon against any disbursement herein from Registry awarded to R. Newton McDowell, filed.

4-17-45 Motion of plaintiff for judgment in condemnation and for defendants fixing compensation by option filed and order thereon filed and entered setting said motion for hearing on May 7, 1945; vacating order heretofore entered continuing cause to May 3, 1945, and directing plaintiff give notice of hearing on aforesaid motion by mail to defendants, their attorneys, and R. Newton McDowell and The Kansas City Title Insurance Company, and by posting notice thereof, etc.

4-19-45 Affidavit as to mailing of notice to defendants, their attorneys and other parties in interest of hearing on motion of plaintiff for judgment in condemnation and for defendants fixing compensation by option, filed by plaintiff.

4-30-45 Clerk's return to posted notice filed.

5- 4-45 Answer of defendants Dennis B. Pitman, et al., to plaintiff's motion for judgment in condemnation and fixing compensation by option, and motion of said defendant for judgment with interest filed.

5- 5-45 Claim of intervening defendant Kansas City Title Insurance Company filed.

5- 7-45 Motion of plaintiff for judgment for plaintiff in condemnation and for defendant fixing compensation by option and on responsive pleadings thereto and counter motions of defendants for payment of interest submitted. Defendants desiring to submit briefs granted 10 days and Government ten days thereafter to submit answering brief.

5-17-45 Plaintiff tenders into Court to the use and benefit of persons entitled thereto, deficiency in the sum of $20,400.00 which sum is deposited by the Clerk in the Registry.

6- 8-45 Memorandum opinion of the Court filed finding issues in favor of defendants and against plaintiff, directing appropriate judgment be submitted respecting the payment of interest, and fully directing counsel to submit orders ruling on various motions and counter-motions, all in accordance with said opinion, for approval, signature and entry, excepting cases Nos. 807 and 874, known as Muschany and Andrews Cases.

[fol. 6] 6- 8-45 Supplemental claim of U. S. of A. filed.

6-30-45 Findings and judgment filed and entered awarding plaintiff judgment in condemnation and defendants judgment fixing compensation by option, with interest, etc.

7- 7-45 Motion of plaintiff for new trial filed.

8-10-45 Amended claim of the United States of America, filed.

8-24-45 Motion of Reconstruction Finance Corporation to intervene, together with proposed intervening petition, filed.

8-29-45 Order of Hon. Geo. H. Moore, received, filed and entered, fixing September 18, 1945 as the time for defendants to file intervening petitions herein and setting such intervening petitions for hearing on September 21, 1945.

9- 7-45 Affidavit as to mailing of notice to defendants to file intervening petitions for distribution of sum on deposit in Registry and of date set for hearing same, filed by plaintiff.

9-17-45 Petition of defendants Dennis B. and May Dell Pitman for distribution of sum on deposit in Registry, filed.

9-17-45 Claim of R. Newton McDowell, filed.

9-17-45 On oral motion of U. S. Attorney, order filed continuing cause from September 21, 1945 to September 28, 1945.

9-17-45 Intervening petition of Blatchford Downing as Assignee-Pledgee of R. Newton McDowell filed.

9-17-45 Motion to intervene and proposed intervening petition thereto attached of National Refining Company, together with affidavit as to service of aforesaid motion and proposed intervening petition by movant upon parties in interest, filed.

9-18-45 Clerk's Return to posted notice filed.

9-28-45 Stipulation between defendant-[landonwers] Dennis B. Pitman, et al., and R. Newton McDowell and Blatchford Downing, as assignee of McDowell, whereby defendants assign to said McDowell 5% of funds deposited in Registry and agree such sum be distributed to McDowell or any person claiming under him as may be directed by the Court, in consideration whereof McDowell releases, etc., said defendants from all claims under contract mentioned in pleadings filed.

Claim of Kansas City Title Insurance Company heard, submitted and allowed. Claim of McDowell submitted and allowed in accordance with aforesaid stipulation. Cause submitted for distribution.

[fol. 7] 9-28-45 Separate motions of Reconstruction Finance Corporation, et al., for leave to intervene submitted on briefs to be hereafter present-

ed; movants granted one week to submit brief, government ten days thereafter in which to submit answering brief and movant Reconstruction Finance Corporation one week thereafter to submit reply brief.

10-23-45 Order of distribution filed and entered.

11-21-45 Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defendants and overruled.

November 23—Notice of appeal of plaintiff to the United States Circuit Court of Appeals, 8th Circuit from final judgment entered herein June 30, 1945, filed by United States Attorney, and copy of aforesaid notice forthwith mailed by the Clerk of the Court to William H. Allen, Esq., atty. of record for defendants, Dennis B. Pitman, et al.

December 7—Appellant's designation of record and (2) statements of points to be relied upon on appeal, filed.

December 11—Affidavit as to mailing to Theodore Bruere, attorney copies of pltff's designation of record on appeal and statement of points to be relied upon on appeal, filed by United States Attorney.

[fol. 8] Petition in Condemnation.

(Filed June 19, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 997. vs. At Law.

Order 10-20-41 215.494

248.824 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 18-A, and

Dennis B. Pitman

May Dell Pitman, wife of Dennis B. Pitman

John Paul, Trustee

The Bank Of Dutzow, a corporation

John Salfen, Tenant

~~George J. Christison~~

~~S. Brooks Pennington~~ } S. Brooks Remington

Collector Of Revenue Of St. Charles County, Missouri

County Of St. Charles, State Of Missouri

~~All Other Unknown Owners of all that tract of land situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and more particularly described herein; Defendants.~~

Order 9-6-41

Order 10-20-41

Tract No. 18-A.

[fol. 9] To The Honorable, The Judges Of The United States District Court For The Eastern District Of Missouri:

Now Comes the plaintiff herein, the United States of America, a sovereign, by its attorneys, Harry C. Blanton, United States Attorney for the Eastern Judicial District of Missouri, and A. G. Edwards, Special Assistant to the United States Attorney, and, leave of Court having been first obtained, files this, its petition herein, at the direction and under the authority of the Attorney General of the United States pursuant to the request of the Secretary of War of the United States, and represents unto the Court as follows:

First: That the defendants herein named are the owners of or claim or may claim an interest or interests in and to the real estate in this petition described, which the plaintiff seeks to condemn in and by this proceeding for the public uses hereinafter more particularly set out;

Second: That the said real estate hereinafter described is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri;

Third: That the plaintiff, the United States of America, is authorized and empowered to acquire the lands herein described by purchase, condemnation, or otherwise, and that the United States Attorney is acting under instructions from the Attorney General of the United States and at the request of the Secretary of War of the United States;

Fourth: That this is an action having for its purpose, among other things, the acquiring by condemnation and in fee simple absolute of the land hereinafter described and the title thereto, which real estate is located as aforesaid, and is authorized and directed to be brought by the Secre- [fol. 10] tary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257; and the Act of Congress approved July 2, 1917, USC 50:171, as amended, which authorizes the acquisition by the Secretary of War of land suitable and necessary for military purposes, and the Act of Congress approved June 26, 1940, (Public No. 667—76th Congress); and the Act of Congress approved September 21, 1940, (Publ. Res. 99—76th Congress); which Acts appropriated funds for such purposes;

Fifth: That the project herein referred to and the matters to be performed, being an acquisition of land for military purposes for an ordnance plant and the national defense of the United States, are within the purview of the sovereign plaintiff and of the Congress of the United States, and the said lands and territory to be acquired are located within the jurisdiction of this Court;

Sixth: That it is the opinion of the Secretary of War that it is necessary and advantageous to the interests of this sovereign plaintiff that the said land be acquired by condemnation under judicial process, and that the acquisition in fee simple of said lands be had forthwith; that the money has been appropriated and is available to pay for said lands;

Seventh: That the land to be condemned and the nature and extent of the interests therein of the various persons and claimants thereto as to each respective parcel is described as follows:

[fol. 11] (A)

Tract No. 18 A containing 248.824 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Parcel 1

A tract of land in Sections 24 and 19, Township 45 North, Ranges 2 East and 3 East, containing 30 acres, more or less, being part of Lot No. 3 as designated and described in the agreed partition of the real estate of James F. Howell, deceased, dated March 29, 1854, and recorded in Book "B" No. 2, pages 450 and following, of Recorder's Office, St. Charles County, Mo., being the remaining portion of said Lot No. 3 after deducting the public road which runs through said Lot No. 3, and 40 acres off the West side thereof conveyed to H. B. Castlio and Mitchell Castlio as per deeds recorded in Book 45, page 209 and Book 38, page 108, and 50 acres conveyed to Boyd Keitel by Dennis B. Pitman as per deed recorded in Book 179, Page 65, said 30 acre tract being more particularly described as follows: Beginning at the northeastermost corner of said Lot No. 3, a point; thence South 7½ degrees West 16.80 chains; thence North 82½ degrees West 18.00 chains; thence North 7½ degrees East 16.80 chains; thence South 82½ degrees East 18.00 chains to the point of beginning, said land being situated in St. Charles County, Missouri, and containing 30.0 acres, more or less.

Parcel 2.

Order 10-20-41

fractional

All of the ^ NE¼ of Section 36, Township 46 North, Range 2 East, lying West of the West line of U. S. Survey 1798, excepting therefrom a tract of land containing 11.58 acres in the Northwest corner thereof described as beginning at the Northwest corner of the NE¼ of said Section 36, thence East 10.94 chains; thence South 10.36 chains; thence West 10.94 chains; thence North 10.36 chains to the point of beginning; said tract containing 73.03 acres, more or less.

Order 10-20-41

Parcel 3.

Also part of U. S. Survey No. 1798, in Township 46, North, Range 2 and 3 East, bounded and more particularly described as follows: Beginning at a rock in the West line of said Survey 1798, which is South 7½ degrees West 35.00 chains from the Northwest corner of said Survey, thence South 82½ degrees East 19.05 chains to corner, a rock, thence South 7½ degrees West 17.41⅔ chains to corner a rock; thence North 82½ degrees West 19.05 chains to point on West line of Survey 1798, thence along said West line of Survey 1798 North 7½ degrees East 17.50 chains to place of beginning, containing 33⅓ acres, more or less.

Parcel 4.

A tract of land located in the Keitel tract of Lot No. 3 between the Francis Howell Cemetery and the Pitman road in U. S. Survey No. 887, being more particularly described as follows: Beginning at the Southeast corner of the Francis Howell Cemetery; thence East 75 feet to the West line of the Pitman road; thence North along said line a distance of 84 feet to a point; thence West 75 feet to the East line of said Cemetery; thence South along said line 84 feet to the point of beginning, said land being located in St. Charles County, Missouri, and containing .144 acres, more or less.

[fol. 12]

Amended description
Case No. 997, Tract No. 18-A

Order 10-20-41

Parcel 5.

A tract of land containing 9.67 acres, being part of the W½ of the NW¼ of Section 6, Township 45 North, Range 3 East, more particularly described as follows to-wit: Beginning in the South line of the Marthasville Road at a rock in the Township line, which rock is distant East 4.38 Chains from another rock in the South line of said road set in the Range line at or near, the Northwest corner of said Section 6, Township 45 North, Range 3 East; thence from said beginning point South 3 degrees 30 minutes East along the land once of J. L. Schenningmann 40.82 chains to the East and West middle line of Section

6, an old stone in said line, from which a Black Walnut bears North 33¼, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links; thence with said line of said Section West 2.37½ chains to a stake; thence North 3 degrees 30 minutes West parallel with the first course along the land once of Edw. Berghaus 40.82 chains to a stake in the South line of the Marthasville road; thence East with the south line of said road 2.37½ Chains to the point of beginning, containing 9.67 acres.

Parcel 6.

Part of the Southwest fractional quarter of Section 27, Township 46 North, Range 2 East, bounded and more particularly described as follows: Beginning at the southwest corner of said Section 27, a rock, from which a black oak 16 inches in diameter bears South 54 degrees West distant 29 links and a white oak 8 inches in diameter bears North 85 degrees West distant 25 links; thence North along the West line of said section 17 chains 90 links to corner, a rock, from which a black oak 12 inches in diameter bears North 30 degrees East distant 17 links and a white oak 4 inches in diameter bears South 13 degrees East distant 22 links; thence South 40¾ degrees East along the land once of Hy Boerding 24 chains 9 links to corner, a rock, on the section line between Sections 27 and 34 of said township and range; thence West 16 chains to the place of beginning, containing 14.32 acres, more or less, and being the same tract of land conveyed by John W. Callison and wife to Nancy E. Callison as per Warranty Deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

Parcel 7.

A tract of land situated in U. S. Survey No. 1641, Township 46 North, Range 2 East, described as follows: Beginning at a point in the center of Dardenne Creek distant North 80 degrees 09 minutes East 13.40 chains and North 9 degrees 14 minutes West 21.37 chains from the most northeasterly corner of U. S. Survey No. 280; thence along the land once of Julia Castlio South 9 degrees 14 minutes East 21.37 chains to a stone in the southern line

of said U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 230; thence along the southern line of said U. S. Survey No. 1641 North 80 degrees 09 minutes East 21.73 chains to an old stone; thence North 9 degrees 00 minutes West along the land once of Schneider 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

[fol. 13] Tract No. 18 A

Parcel 5.

A tract of land containing 9.67 acres, being part of the W½ of the NW¼ of Section 6, Township 45 North, Range 3 East, more particularly described as follows, to-wit: Beginning in the South line of the Marthasville Road at a rock in the Township line, which rock is distant East 4.38 Chains from another rock in the South line of said road set in the Range line, at or near, the Northwest corner of said Section 6, Township 45 North, Range 3 East; thence from said beginning point South 3 degrees 30 minutes East 40.82 chains to the East and West middle line of Section 6, an old stone in said line, from which a Black Walnut bears North 33¼, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links; thence with said line of said Section West 2.37½ chains to a stake; thence North 3 degrees 30 minutes West parallel with the first course 40.82 chains to a stake in the South line of the Marthasville road; thence East with the South line of said road 2.37½ Chains to the point of beginning, containing 9.67 acres.

Parcel 6.

Part of the Southwest fractional quarter of Section 27, Township 46 North, Range 2 East, bounded and more particularly described as follows: Beginning at the southwest corner of said Section 27, a rock, from which a black oak 16 inches in diameter bears South 54 degrees West distant 29 links and a white oak 8 inches in diameter bears North 85 degrees West distant 25 links; thence North 17 chains 90 links to corner, a rock, from which a

black oak 12 inches in diameter bears North 30 degrees East distant 17 links and a white oak 4 inches in diameter bears South 13 degrees East distant 22 links; thence South 40¾ degrees East 24 chains 9 links to corner, a rock, on the section line between Sections 27 and 34 of said township and range; thence West 16 chains to the place of beginning, containing 14.32 acres, more or less, and being the same tract of land conveyed by John W. Callison and wife to Nancy E. Callison as per Warranty Deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

Parcel 7.

A tract of land situated in U. S. Survey No. 1641, Township 46 North, Range 2, East, described as follows: Beginning at a point in the center of Dardenne Creek distant North 80 degrees 09 minutes East 13.40 chains and North 9 degrees 14 minutes West 21.37 chains from the most northeasterly corner of U. S. Survey No. 280; thence along the western line of said tract South 9 degrees 14 minutes East 21.37 chains to a stone in the southern line of said U. S. Survey No. 1641 which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280; thence along the southern line of said U. S. Survey No. 1641 North 80 degrees 09 minutes East 21.73 chains to an old stone; thence North 9 degrees 00 minutes West 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

[fol. 14]

Amended description
Case No. 997, Tract No. 18-A

Order 10-20-41

A tract of land situated in fractional Section 24, Township 46 North, Range 2 East, described as follows: Beginning at a stone in the Southern line of U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280 and from which stone a Black Walnut 30 inches bears North 9 degree 00 minutes West 51½ links;

thence South 9 degrees 14 minutes East along the land once of O. W. Fosher 10.80 chains to an iron rod; thence North 80 degrees 09 minutes East along the land once of O. W. Fosher 17.62 chains to the center line of the former Pitman private road, 16 feet wide; thence North 0 degrees 19 minutes East 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along said Survey line South 80 degrees 09 minutes West 19.44 chains to the place of beginning, containing 20 acres.

All of the above described land being situated in St. Charles County, Missouri, and containing in all 215.494 acres, more or less.

Subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

[fol. 15] Tract No. 18 A

A tract of land situated in fractional Section 24, Township 46 North, Range 2, East, described as follows: Beginning at a stone in the Southern line of U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280 and from which stone a Black Walnut 30 inches bears North 9 degrees 00 minutes West 51½ links; thence South 9 degrees 14 minutes East 10.80 chains to an iron rod; thence North 80 degrees 09 minutes East 17.62 chains to the center line of the former Pitman private road, 16 feet wide; thence North 0 degrees 19 minutes East 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along said Survey line South 80 degrees 09 minutes West 19.44 chains to the place of beginning, containing 20 acres.

All of the above described land being situated in St. Charles County, Missouri, and containing in all 248.824 acres, more or less.

Subject to all existing highway and public utility easements but including the fee underlying such existing easements.

[fol. 16] (B)

That the following defendants own or may own or may claim to have some right, title, interest, lien or estate in, to or upon said land:

Dennis B. Pitman

May Dell Pitman, wife of Dennis B. Pitman

John Paul, Trustee

The Bank of Dutzow, a corporation

John Salfen, Tenant

~~George J. Christisen~~

~~A. Brooks Pennington~~ A. Brooks Remington

Order 9-6-41

[fol. 17] Eighth: That all of the land described in this petition is subject to liens or claims for certain taxes, and the County of St. Charles, State of Missouri, and the Collector of Revenue of St. Charles County, Missouri, are, therefore, named parties defendant herein;

Ninth: That within the boundaries of the above described tract of land are located certain roads and highways; that the defendants hereinbefore named as owners of the fee and as claiming an interest in said lands, each claim and assert, or may claim and assert a reversionary interest in and to the premises respectively so occupied as roads and highways, and which reversionary interests the plaintiff herein seeks to include and condemn in this proceeding;

Tenth: That all and singular, the heirs, husbands, wives, devisees, executors, administrators, representatives, aliences, successors and assigns of each and every of the above named persons, firms and corporations; and all unknown owners, lienors and claimants, having or claiming any right, title, estate, equity, interest or lien; and all occupants, lessees, licensees, users, holders and owners of and

claimants to easements in, on, over, across or through said lands; and all persons, firms and corporations having or claiming any title to or interest in any of said land or any part thereof, herein sought to be condemned, are made parties defendant, as hereinabove specifically named, if known, and if unknown such unknown persons by the description of the "Unknown Owners" of the land herein described and to be condemned, to the end that they may come into court and by proper pleadings make known their interests and claims to said lands or to the proceeds arising therefrom;

Eleventh: That your petitioner has attempted to set forth the interest or estates of all persons, firms and corporations in the lands herein mentioned as far as your petitioner has been able to ascertain the same; but, notwithstanding such statement, all persons, firms or corporations, including all unknown officers, trustees, directors and shareholders of any defunct corporation having or claiming any interest or estate in or to said land, are made parties to this proceeding generally, to the end that all of their rights, title, interests and estate, whatever it may be, to all and [fol. 18] singular, the premises above mentioned may be reached and divested out of them and vested in your petitioner, the United States of America;

Wherefore, your petitioner prays that this Honorable Court will take jurisdiction of this cause and will make and have entered all such orders, judgments and decrees as may be necessary to bring all the known owners of said land before this Court, and to make all unknown parties having any interest therein defendants hereto, and to that end that process, summons and notice may issue for the defendants hereinbefore named, and for the order of the Court directing notice of suit, and for publication thereof to the unknown, not found and non-resident defendants herein, if any there be, all as required by law, giving them notice of the time when and the place where this petition will be heard, and for such other orders and decrees as may be proper and necessary; and that the Court will appoint three disinterested commissioners, qualified by law, to determine, assess, and award the value

of the property proposed to be taken and other damages which may be sustained by the respective owners of or persons claiming an interest in and to the aforesaid property hereinbefore described and proposed to be taken; and that said commissioners will assess according to the provisions of the acts [appropos] to this proceeding and the provisions of the law applicable thereto, under which this action is brought, the special and direct benefits arising from the improvements, if any, which may be sustained by, or may accrue to, said defendants, that the Court will decree to this plaintiff the right of judgment in condemnation herein in fee simple as contemplated by the laws of Congress in this case made applicable, and that these defendants and each of them, and all other claimants, be required to show cause on the day therein fixed why said plaintiff should not have the relief herein prayed for; that plaintiff may have judgment for condemnation of the property hereinbefore described, and that the defendants, and each of them shall be divested of all of their said right, title and interest in and to the aforesaid premises, and that the title thereto in fee simple shall be vested in this sovereign plaintiff, and that it shall have, own and control the same forever; that the Court, upon the filing of this petition, will make an order pursuant to the Act of Congress [fol. 19] approved February 26, 1931. (46 Stat. 1421), decreeing to the plaintiff the right to take immediate possession of said lands for the purposes hereinbefore described in order that the plaintiff, its servants, agents and employees, may proceed with the aforesaid project and for the purposes hereinbefore required and to permit the said plaintiff to proceed with the work of construction of said ordnance plant as contemplated by the plans of said project; that the plaintiff may have judgment against the respective premises, property or interests therein for special benefits, if any, in excess of the values and damages in each instance assessed in the premises by the aforesaid commissioners; and that this Court will make such further necessary orders in the premises as shall be just, proper, necessary and requisite to vest said lands in fee simple absolute in the United States of America, and grant to this petitioner all such other and further relief

in the premises to which this petitioner may be found entitled and as the Court may deem just and proper.

THE UNITED STATES OF AMERICA,
By Harry C. Blanton,
United States Attorney for the
Eastern District of Missouri,
402 New Federal Building,
St. Louis, Missouri.

A. G. EDWARDS,
Special Assistant to the
United States Attorney,
410 New Federal Building,
St. Louis, Missouri.

[fol. 20] United States of America,
Eastern District of Missouri—ss.:

Before me, the undersigned, personally appeared Harry C. Blanton, United States Attorney in and for the Eastern District of Missouri, and made oath in due form of law that the matters and facts set forth in the foregoing petition are true to the best of his knowledge, information and belief; and that this proceeding is in good faith for the purposes specified in the petition.

HARRY C. BLANTON.

Subscribed and sworn to before me, this 19th day of June, 1941.

JAMES J. O'CONNOR,
Clerk of U. S. District Court in and
for the Eastern District of Missouri.
By Harold G. Pryce, Deputy.

(Seal)

[fol. 21] Declaration of Taking.

(Filed June 16, 1941.)

In The United States District Court In And For The Eastern District Of Missouri.

United States Of America, Petitioner,
Case No. 979. vs.
1,453.50 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, And Mary Schneider, Et Al., Defendants.

To The Honorable, The United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. sec. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518, 50 U.S.C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act of Congress approved April 5, 1941 (Public Law 29 —77th Congress), which Act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the site of an ordnance munitions plant and for other uses incident thereto. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of the Weldon Springs Ordnance Plant, St. Charles County, Missouri, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

[fol. 22] 2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of the same lands described in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto, subject, however, to existing rights for easements for public utilities.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the

persons entitled thereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 13th day of June, A. D. 1941, in the City of Washington, District of Columbia.

HENRY L. STIMSON,
Secretary of War of the United States.

[fol. 23] Schedule "A".

The land which is the subject matter of this Declaration of Taking and of this condemnation aggregates 1,453.50 acres, more or less, situate and being in the County of St. Charles, State of Missouri. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

[fol. 24] Tract No. 18-A.

Description:

Parcel 1

A tract of land in Sections 24 and 19, Township 45 North, Ranges 2 East and 3 East, containing 30 acres, more or less, being part of Lot No. 3 as designated and described in the agreed partition of the real estate of James F. Howell, deceased, dated March 29, 1854, and recorded in Book "B" No. 2, pages 450 and following, of Recorder's Office, St. Charles County, Mo., being the remaining portion of said Lot No. 3 after deducting the public road which runs through said Lot No. 3, and 40 acres off the West side thereof conveyed to H. B. Castlio and Mitchell Castlio as per deeds recorded in Book 45, page 209 and Book 38, page 108, and 50 acres conveyed to Boyd Keitel by Dennis B. Pitman as per deed recorded in Book 179, Page 65, said 30 acre tract being more particularly described as follows: Beginning at the northeasternmost corner of said Lot No. 3, a point; thence South 7½ degrees West 16.80 chains; thence North 82½ degrees West 18.00 chains; thence North 7½

degrees East 16.80 chains; thence South 82½ degrees East 18.00 chains to the point of beginning, said land being situated in St. Charles County, Missouri, and containing 30.0 acres, more or less.

Parcel 2.

All of the NE¼ of Section 36, Township 46 North, Range 2 East, lying West of the West line of U. S. Survey 1798, excepting therefrom a tract of land containing 11.58 acres in the Northwest corner thereof described as beginning at the Northwest corner of the NE¼ of said Section 36, thence East 10.94 chains; thence South 10.36 chains; thence West 10.94 chains; thence North 10.36 chains to the point of beginning; said tract containing 106.36 acres, more or less.

Parcel 3.

Also part of U. S. Survey No. 1798, in Township 46, North, Range 2 and 3 East, bounded and more particularly described as follows: Beginning at a rock in the West line of said Survey 1798, which is South 7½ degrees West 35.00 chains from the Northwest corner of said Survey, thence South 82½ degrees East 19.05 chains to corner, a rock, thence South 7½ degrees West 17.41⅔ chains to corner a rock; thence North 82½ degrees West 19.05 chains to point on West line of Survey 1798, thence along said West line of Survey 1798 North 7½ degrees East 17.50 chains to place of beginning, containing 33⅓ acres, more or less.

Parcel 4.

A tract of land located in the Keitel tract of Lot No. 3 between the Francis Howell Cemetery and the Pitman road in U. S. Survey No. 887, being more particularly described as follows: Beginning at the Southeast corner of the Francis Howell Cemetery; thence East 75 feet to the West line of the Pitman road; thence North along said line a distance of 84 feet to a point; thence West 75 feet to the East line of said Cemetery; thence South along said line 84 feet to the point of beginning, said land being located in St. Charles County, Missouri, and containing .144 acres, more or less.

[fol. 25]

Parcel 5.

A tract of land containing 9.67 acres, being part of the W½ of the NW¼ of Section 6, Township 45 North, Range 3

East, more particularly described as follows to-wit: Beginning in the South line of the Marthasville Road at a rock in the Township line, which rock is distant East 4.38 Chains from another rock in the South line of said road set in the Range line, at or near, the Northwest corner of said Section 6, Township 45 North, Range 3 East; thence from said beginning point South 3 degrees 30 minutes East 40.82 chains to the East and West middle line of Section 6, an old stone in said line, from which a Black Walnut bears North 33¼, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links; thence with said line of said Section West 2.37½ chains to a stake; thence North 3 degrees 30 minutes West parallel with the first course 40.82 chains to a stake in the South line of the Marthasville road; thence East with the South line of said road 2.37½ Chains to the point of beginning, containing 9.67 acres.

Parcel 6.

Part of the Southwest fractional quarter of Section 27, Township 46 North, Range 2 East, bounded and more particularly described as follows: Beginning at the southwest corner of said Section 27, a rock, from which a black oak 16 inches in diameter bears South 54 degrees West distant 29 links and a white oak 8 inches in diameter bears North 85 degrees West distant 25 links; thence North 17 chains 90 links to corner, a rock, from which a black oak 12 inches in diameter bears North 30 degrees East distant 17 links and a white oak 4 inches in diameter bears South 13 degrees East distant 22 links; thence South 40¾ degrees East 24 chains 9 links to corner, a rock, on the section line between Sections 27 and 34 of said township and range; thence West 16 chains to the place of beginning, containing 14.32 acres, more or less, and being the same tract of land conveyed by John W. Callison and wife to Nancy E. Callison as per Warranty Deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

Parcel 7.

A tract of land situated in U. S. Survey No. 1641, Township 46 North, Range 2 East, described as follows: Beginning at a point in the center of Dardenne Creek distant North 80 degrees 09 minutes East 13.40 chains and North 9 degrees 14 minutes West 21.37 chains from the most northeasterly corner of U. S. Survey No. 280; thence along the western

line of said tract South 9 degrees 14 minutes East 21.37 chains to a stone in the southern line of said U. S. Survey No. 1641 which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280; thence along the southern line of said U. S. Survey No. 1641 North 80 degrees 09 minutes East 21.73 chains to an old stone; thence North 9 degrees 00 minutes West 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

[fol. 26] A tract of land situated in fractional Section 24, Township 46 North, Range 2 East, described as follows: Beginning at a stone in the Southern line of U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280 and from which stone a Black Walnut 30 inches bears North 9 degrees 00 mintues West 51½ links; thence South 9 degrees 14 minutes East 10.80 chains to an iron rod; thence North 80 degrees 09 minutes East 17.62 chains to the center line of the former Pitman private road, 16 feet wide; thence North 0 degrees 19 minutes East 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along said Survey line South 80 degrees 09 minutes West 19.44 chains to the place of beginning, containing 20 acres.

All of the above described land being situated in St. Charles County, Missouri, and containing in all 248.824 acres, more or less.

Names of purported owners: Dennis B. Pitman and May Dell Pitman.

Estimated Compensation: $14,600.00.

[fol. 27] Order And Judgment On Declaration Of Taking.

(Filed June 19, 1941.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 997. vs. At Law.
Tract No. 18-A.

248.824 Acres Of Land, More Or Less, Situate In St. Charles County, State Of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., Defendants.

This cause coming on to be heard at this term of Court upon the motion of the plaintiff, the United States of America, to enter a judgment herein on the Declaration of Taking filed in Case No. 979 on June 16, 1941, and upon consideration of said motion, and the condemnation petition filed herein, and the Declaration of Taking filed in said Cause No. 979, the Court, having heard arguments of counsel and being fully advised in the premises, finds:

First: That a petition in condemnation was duly filed at the request of the Secretary of War of the United States, the authority empowered by law to acquire the land described in said petition, and also under authority of the Attorney General of the United States.

Second: That said Petition filed herein and the Declaration of Taking heretofore filed in Cause No. 979 state the authority under which, and the public use for which, said land was taken; that said Declaration of Taking was signed by the Secretary of War of the United States, who was, and is, duly authorized and empowered by law to acquire the land described in said petition for, on behalf of and in the name of the United States of America, for the purposes therein set forth;

[fol. 28] Third: That a proper description of the land taken, sufficient for identification thereof, is set out in said Declaration of Taking;

Fourth: That the said Declaration of Taking contains a statement of the estate or interest in the said land taken for said public use;

Fifth: That a map or plan showing the land taken is annexed to and made a part of the said Declaration of Taking;

Sixth: That a statement is contained in the said Declaration of Taking of a sum of money, estimated by said acquiring authority to be just compensation for Tract No. 18-A, in the amount of Fourteen Thousand Six Hundred Dollars And No Cents ($14,600.00), and that said sum was deposited in the Registry of this Court in Case No. 979 to the use of the persons entitled thereto, upon and at the time of the filing of the said Declaration of Taking:

Seventh: That a statement is contained in the said Declaration of Taking that the amount of the ultimate award of compensation for Tract No. 18-A, for the taking of said property, in the opinion of the Secretary of War of the United States, probably will be within any limits prescribed by Congress on the prices to be paid therefor,

It Is Therefore Ordered And Adjudged that the title to said land in fee simple absolute, vested in the United States of America upon the filing of the said Declaration of Taking and depositing in the Registry of this Court of the aforesaid estimated compensation, which land is situated in St. Charles County, Missouri, and described as follows:

[fol. 29] Tract No. 18 A containing 248.824 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Parcel 1.

A tract of land in Sections 24 and 19, Township 45 North, Ranges 2 East and 3 East, containing 30 acres, more or less, being part of Lot No. 3 as designated and described in the agreed partition of the real estate of James F. Howell, deceased, dated March 29, 1854, and recorded in Book "B" No. 2, pages 450 and following, of Recorder's Office, St. Charles County, Mo., being the remaining portion of said Lot No. 3 after deducting the public road which runs through said Lot No. 3, and 40 acres off the West side thereof conveyed to H. B. Castlio and Mitchell Castlio as per deeds recorded in Book 45, page 209 and Book 38, page 108, and 50 acres conveyed to Boyd Keitel by Dennis B. Pitman as per deed recorded in Book 179, Page 65, said 30 acre tract being more particularly described as follows: Beginning at the northeasternmost corner of said Lot No. 3, a point; thence South 7½ degrees West 16.80 chains; thence North 82½ degrees West 18.00 chains; thence North 7½ degrees East 16.80 chains; thence South 82½ degrees East 18.00 chains to the point of beginning, said land being situated in St. Charles County, Missouri, and containing 30.0 acres, more or less.

Parcel 2.

All of the NE¼ of Section 36, Township 46 North, Range 2 East, lying West of the West line of U. S. Sur-

vey 1798, excepting therefrom a tract of land containing 11.58 acres in the Northwest corner thereof described as beginning at the Northwest corner of the NE¼ of said Section 36, thence East 10.94 chains; thence South 10.36 chains; thence West 10.94 chains; thence North 10.36 chains to the point of beginning; said tract containing 106.36 acres, more or less.

Parcel 3.

Also part of U. S. Survey No. 1798, in Township 46, North, Range 2 and 3 East, bounded and more particularly described as follows: Beginning at a rock in the West line of said Survey 1798, which is South 7½ degrees West 35.00 chains from the Northwest corner of said Survey, thence South 82½ degrees East 19.05 chains to corner, a rock, thence South 7½ degrees West 17.41⅔ chains to corner a rock; thence North 82½ degrees West 19.05 chains to point on West line of Survey 1798, thence along said West line of Survey 1798 North 7½ degrees East 17.50 chains to place of beginning, containing 33⅓ acres, more or less.

Parcel 4.

A tract of land located in the Keitel tract of Lot No. 3 between the Francis Howell Cemetery and the Pitman road in U. S. Survey No. 887, being more particularly described as follows: Beginning at the Southeast corner of the Francis Howell Cemetery; thence East 75 feet to the West line of the Pitman road; thence North along said line a distance of 84 feet to a point; thence West 75 feet to the East line of said Cemetery; thence South along said line 84 feet to the pont of beginning, said land being located in St. Charles County, Missouri, and containing .144 acres, more or less.

[Fol. 30]

Parcel 5.

A tract of land containing 9.67 acres, being part of the W½ of the NW¼ of Section 6, Township 45 North, Range 3 East, more particularly described as follows to-wit: Beginning in the South line of the Marthasville Road at a rock in the Township line, which rock is distant East 4.38 Chains from another rock in the South line of said road set in the Range line, at or near, the Northwest

corner of said Section 6, Township 45 North, Range 3 East; thence from said beginning point South 3 degrees 30 minutes East 40.82 chains to the East and West middle line of Section 6, an old stone in said line, from which a Black Walnut bears North 33¼, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links; thence with said line of said Section West 2.37½ chains to a stake; thence North 3 degrees 30 minutes West parallel with the first course 40.82 chains to a stake in the South line of the Marthasville road; thence East with the South line of said road 2.37½ Chains to the point of beginning, containing 9.67 acres.

Parcel 6.

Part of the Southwest fractional quarter of Section 27, Township 46 North, Range 2 East, bounded and more particularly described as follows: Beginning at the southwest corner of said Section 27, a rock, from which a black oak 16 inches in diameter bears South 54 degrees West distant 29 links and a white oak 8 inches in diameter bears North 85 degrees West distant 25 links; thence North 17 chains 90 links to corner, a rock, from which a black oak 12 inches in diameter bears North 30 degrees East distant 17 links and a white oak 4 inches in diameter bears South 13 degrees East distant 22 links; thence South 40¾ degrees East 24 chains 9 links to corner a rock, on the section line between Sections 27 and 34 of said township and range; thence West 16 chains to the place of beginning, containing 14.32 acres, more or less, and being the same tract of land conveyed by John W. Callison and wife to Nancy E. Callison as per Warranty Deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

Parcel 7.

A tract of land situated in U. S. Survey No. 1641, Township 46 North, Range 2 East, described as follows: Beginning at a point in the center of Dardenne Creek distant North 80 degrees 09 minutes East 13.40 chains and North 9 degrees 14 minutes West 21.37 chains from the most northeasterly corner of U. S. Survey No. 280; thence

along the western line of said tract South 9 degrees 14 minutes East 21.37 chains to a stone in the southern line of said U. S. Survey No. 1641 which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280; thence along the southern line of said U. S. Survey No. 1641 North 80 degrees 09 minutes East 21.73 chains to an old stone; thence North 9 degrees 00 minutes West 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

[fol. 31] A tract of land situated in fractional Section 24, Township 46 North, Range 2 East, described as follows: Beginning at a stone in the Southern line of U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280 and from which stone a Black Walnut 30 inches bears North 9 degrees 00 minutes West 51½ links; thence South 9 degrees 14 minutes East 10.80 chains to an iron rod; thence North 80 degrees 09 minutes East 17.62 chains to the center line of the former Pitman private road, 16 feet wide; thence North 0 degrees 19 minutes East 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along said Survey line South 80 degrees 09 minutes West 19.44 chains to the place of beginning, containing 20 acres.

All of the above described land being situated in St. Charles County, Missouri, and containing in all 248.824 acres, more or less.

Subject to all existing highway and public utility easements but including the fee underlying such existing easements.

[fol. 32] that said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding, shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law, and

It Is Further Ordered and Adjudged that the possession of said lands shall be immediately surrendered to the United States of America.

This cause is held open for the entry of such other and further orders and judgments as may be just and equitable in the premises.

Entered on this 19th day of June, 1941.

GEO. H. MOORE,
United States District Judge.

[fol. 33] Order Transferring Fund from the Declaration of Taking in Case No. 979.

(Filed June 19, 1941.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 997. vs. At Law.
Tract No. 18-A.
248.24 Acres of Land, More or Less, Situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., Defendants.

It appearing to the Court that in the Declaration of Taking filed with Case No. 979 on June 16, 1941, there was paid into the Registry of the Court as estimated compensation for Tract No. 979, described in the petition filed herein, the amount of $14,600.00;

On oral motion of the United States Attorney, the Clerk of this Court is directed to transfer $14,600.00, of the whole amount deposited under the Declaration of Taking heretofore filed, to this cause for the use and benefit of the defendants entitled thereto as to Tract No. 18-A.

GEO. H. MOORE,
United States District Judge.

Dated, this 19th day of June, 1941.

[fol. 34] Answer of Defendants Dennis B. Pitman and May Dell Pitman.

(Filed September 3, 1941.)

Now come the defendants, Dennis B. Pitman and May Dell Pitman, wife of Dennis Pitman, and for their separate answer to the petition filed by plaintiff in the above styled and numbered cause, state:

First: That for their answer to paragraph numbered "First" in said petition, these defendants state that the only interest they claim in the property described in plaintiffs petition is such as is hereinafter set out; that on the 7th day of November, 1940, these defendants were the owners in fee simple of the real estate described in said petition and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, together with the improvements thereon, and that on said 7th day of November, 1940, these defendants, at the instance and request of plaintiff, and on a printed form provided therefor by plaintiff, signed and delivered to plaintiff an option for the sale to plaintiff of the said lands described in plaintiffs petition and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, whereby plaintiff was granted the right to purchase said parcels of real estate last above mentioned and was also granted the right to acquire from these defendants such title as they might be able to give [fol. 35] to the tract of land in said petition referred to and designated as Parcel 4, all for the price and sum of Thirty-five Thousand Dollars $(35,000.00); that said option further granted the plaintiff the right of immediate occupancy and use of said real estate for any purpose whatsoever from and after the acceptance by plaintiff of said option, such right of acceptance to be exercised by plaintiff within thirty days after said 7th day of November, 1940; that thereafter, on the 14th day of November, 1940, plaintiff duly and legally exercised its right under said option, and on said last named date duly and legally accepted the same, and said option thereupon became a binding and legal contract between plaintiff and these defendants whereby these defendants agreed to sell to plaintiff and plaintiff agreed to purchase from these de-

fendants the real estate in said petition described and referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, with the improvements thereon, and whereby these defendants agreed to transfer and convey to plaintiff such title as they could give to said tract of land in said petition described and referred to and designated as Parcel 4 (referred to in said option and contract as being cemetery property), and whereby plaintiff agreed to accept such title to said last mentioned parcel, all for and at the price and sum of Thirty-five Thousand Dollars ($35,000.00); that a true copy of said option and of said acceptance thereof by plaintiff, constituting the said contract between plaintiff and these defendants as aforesaid, is hereto attached as "Exhibit A" and is by reference incorporated herein and made a part hereof as fully as if copied herein in words and figures; that thereafter, pursuant to the terms of said option and contract, these defendants, on the 12th day of December, 1940, duly executed to plaintiff a warranty deed, dated said 12th day of December, 1940, which deed was by these defendants duly acknowledged on the 15th day of January, 1941, and delivered to plaintiff, whereby these defendants, for the consideration expressed in said deed, to-wit, [fol. 36] Thirty-five Thousand Dollars ($35,000.00), conveyed to plaintiff the real estate in said petition described and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, which deed was duly accepted by plaintiff and was, on the 5th day of February, 1941, duly filed for record in the Recorder's Office of St. Charles County, Missouri, and was thereafter duly recorded in said Recorder's Office in Book 199, page 310; and that pursuant to the terms of said option and contract these defendants, on the 15th day of January, 1941, duly executed and delivered to plaintiff a quitclaim deed, dated said January 15, 1941, whereby these defendants remised, released and forever quitclaimed unto plaintiff the tract of land in said petition described and referred to and designated as Parcel 4, which quitclaim deed was duly accepted by plaintiff and was, on February 5, 1941, duly filed for record in the Recorder's Office of St. Charles County, Missouri, and was thereafter duly recorded in said Recorder's Office in Book 198, page 30; to which

deeds the requisite revenue stamps were attached; and that on or about said 15th day of January, 1941, plaintiff took actual possession of all of the lands described in plaintiff's petition and the improvements thereon and has since retained the same and deprived these defendants of all possession thereof.

Second: That for answer to paragraph numbered "Second" in said petition, these defendants admit that the real estate described in said petition is located in St. Charles County, Missouri, and within the jurisdiction of the United States District Court in and for the Eastern Division of the Eastern Judicial District of Missouri.

Third: That for answer to paragraph numbered "Third" in said petition, these defendants admit that plaintiff was authorized and empowered to acquire the lands in plaintiff's petition described, by purchase, condemnation or otherwise, but deny that plaintiff is now authorized to so acquire said lands except pursuant to and in accordance with the terms of the contract between these defendants and plaintiff which is herein referred to; and admit that the United States Attorney is acting under instruc-
[fol. 37] tions from the Attorney General of the United States, but deny, on information and belief, that he is so acting at the request of the Secretary of War of the United States, and state that under the contract heretofore entered into between plaintiff and these defendants as aforesaid, hereinafter set out, the Secretary of War has no right, power or authority to make any request for the condemnation of said property because of the said contract heretofore made by plaintiff with these defendants and the possession heretofore taken of said land by plaintiff and the deeds executed and delivered by these defendants to plaintiff and accepted by plaintiff as aforesaid.

Fourth: That for answer to paragraph numbered "Fourth" in said petition, these defendants admit that this is an action to acquire by condemnation in fee simple absolute the land described in plaintiff's petition and the improvements thereon and the title thereto, and admit that this action is brought by direction of the Attorney General of the United States, but these defendants state that said action can only be brought pursuant to said contract between

plaintiff and these defendants, and state that whether or not this action is authorized or directed to be brought by the Secretary of War pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 USC Section 257) and The Act of Congress approved July 2, 1917, USC 50; 171 as amended, is immaterial herein because of the said contract and the said acceptance by plaintiff of said deeds to said property and the said taking possession of said property by plaintiff; and these defendants admit that the Act of Congress approved June 26, 1940 (Public No. 667-76th Congress) and the Act of Congress approved September 24, 1940 (Publ. Res. 99—76th Congress) appropriated funds for the acquisition of said property by plaintiff.

Fifth: That for answer to paragraph numbered "Fifth" in said petition, these defendants admit that the acquisition of the lands described in said petition for military purposes for an ordnance plant and the national defense of the United States is within the purview of the sovereign plaintiff and of the Congress of the United States, and admits that the said property is located within the jurisdiction of this Court.

[fol. 38] Sixth: That for answer to paragraph numbered "Sixth" in said petition, these defendants state that they have no information sufficient to form a belief as to whether or not the opinion of the Secretary of War is that it is necessary or advantageous to the interests of plaintiff that said property be acquired by condemnation under judicial process, and state that the opinion of the Secretary of War as to that matter is immaterial herein because of the said contract entered into by and between plaintiff and these defendants as aforesaid, the said delivery to and acceptance by plaintiff of said deeds to said property and the taking possession of said property by plaintiff as aforesaid; and these defendants admit that the money has been appropriated and is available to pay for said lands.

Seventh: That for answer to paragraph numbered "Seventh" in said petition, these defendants admit that the property sought to be condemned by this proceeding and described in said paragraph numbered "Seventh" is subject to all existing highway and public utility easements, but including the fee underlying such existing easements,

and state that said property described in said paragraph numbered "Seventh" is the same property described in the contract aforesaid between plaintiff and these defendants, and that the property described in said paragraph numbered "Seventh" in said petition and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7 is the same property that was conveyed by these defendants to plaintiff by said warranty deed of date December 12, 1940, and that the property described in said "Seventh" paragraph in said petition and therein referred to and designated as Parcel 4 is the same property that was remised, released and quitclaimed by these defendants to plaintiff by said quitclaim deed of date January 15, 1941, and that these defendants make no claim to any of the aforesaid property except such as is set out in this answer; but these defendants deny that the land in [fol. 39] said petition described and referred to and designated as Parcel 2 contains 106.36 acres, and state that the same contains 73.027 acres; that said land referred to and designated in said petition as Parcel 2 and that referred to and designated therein as Parcel 3, together contain 106.36 acres, more or less; and that all of the lands mentioned and described in said petition contain 215.491 acres, more or less.

Eighth: That for answer to paragraph numbered "Eighth" in said petition, these defendants admit that the property in plaintiff's petition described and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7 is subject to liens or claims for general taxes assessed as of June 1, 1940.

Ninth: That for answer to paragraph numbered "Ninth" in said petition, these defendants state that whether or not there are within the boundaries of the land described in plaintiff's petition roads or highways is immaterial herein because of the said deeds by these defendants to plaintiff as aforesaid and the acceptance thereof by plaintiff and the taking of possession by plaintiff of said property, and that upon the payment to them of the amount agreed upon by said contract these defendants will be unable to claim or assert any reversionary interest or any interest in or to any of such premises that may be so occupied by roads or highways; and these defendants admit that by condem-

nation proceedings any reversionary interest which these defendants might have asserted except for said contract, the acceptance by plaintiff of said deeds and the taking of possession by plaintiff of said property, as aforesaid, will be included and covered by condemnation thereof by plaintiff herein.

Tenth: That for answer to paragraph numbered "Tenth" in said petition, these defendants state that there are no other persons except these defendants who have or can have or claim to have any interest in or to any of the property in said petition described and referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel [fol. 40] 6 and Parcel 7, or any right under or by virtue of the contract aforesaid.

Eleventh: That for answer to paragraph numbered "Eleventh" in said petition, these defendants state that there are no other persons except these defendants who have or can have or claim to have any interest in or to any of the property in said petition described and referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, or any right under or by virtue of the contract aforesaid.

Twelfth: Further answering said petition, these defendants state that on or about the 7th day of November, 1940, they granted unto plaintiff an option in writing to purchase the property in said petition described and therein referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7, with the improvements thereon, and to acquire from these defendants such title as they might be able to give to the tract of land in said petition referred to and designated as Parcel 4, all for the price and sum of Thirty-five Thousand Dollars ($35,000.00); that thereafter, pursuant to the terms of said option, said option was exercised and accepted on the 14th day of November, 1940, by plaintiff, by and through its duly authorized official, and said option and said acceptance thereof became and is a binding contract between plaintiff and these defendants; that a true copy of said option and of said acceptance thereof by plaintiff, constituting the said contract between plaintiff and these defendants, is attached hereto as "Exhibit A" and is by reference incorporated herein and made a part

hereof as fully as if copied herein in words and figures; that thereafter, on the 12th day of December, 1940, these defendants duly executed and delivered to plaintiff a warranty deed, dated said 12th day of December, 1940, which deed was by these defendants duly acknowledged on the 15th day of January, 1941, and delivered to plaintiff, whereby these defendants duly conveyed to plaintiff the real estate in said petition described and referred to and designated as Parcel 1, Parcel 2, Parcel 3, Parcel 5, Parcel 6 and Parcel 7; that said warranty deed was duly accepted by [fol. 41] plaintiff and was, on the 5th day of February, 1941, duly filed for record in the Recorder's Office in Book 199, page 310; that on the 15th day of January, 1941, these defendants duly executed and delivered to plaintiff a quitclaim deed, dated said January 15, 1941, whereby these defendants duly remised, released and forever quitclaimed unto plaintiff the tract of land in said petition described and referred to and designated as Parcel 4 and conveyed to plaintiff all their right, title, and interest in or to the same, which quitclaim deed was duly accepted by plaintiff and was, on February 5, 1941, duly filed for record in the Recorder's Office of St. Charles County, Missouri, and was duly recorded in said Recorder's Office in Book 198, page 30; that on or about said 15th day of January, 1941, plaintiff took possession of the lands described in plaintiff's petition and removed or destroyed the improvements thereon and has continuously since said time been in possession of said real estate and is now in possession thereof; that the said deeds were made and delivered to and accepted by plaintiff pursuant to the terms and provisions of the contract aforesaid; that under and pursuant to the terms of said contract plaintiff had the right to institute a proceeding in condemnation for the acquisition of the lands described in said petition or for having the title thereto vested or confirmed in plaintiff by the judgment of this court in such condemnation proceeding, and that, notwithstanding the conveyances by these defendants to plaintiff as aforesaid, plaintiff has exercised the right to institute and has instituted this condemnation proceeding against said lands and these defendants and the other defendants named herein; none of which other defendants have any right, title or interest in or to any of the lands described in plaintiff's petition; and that under and by virtue of the terms

and provisions of said contract, it was agreed by and between plaintiff and these defendants that if such condemnation proceeding should be instituted the amount of the award therein would, by consent, be fixed at the agreed valuation named in said option and contract as aforesaid, namely, Thirty-five Thousand Dollars ($35,000.00), and that [fol. 42] in such proceeding the plaintiff would, upon the filing of the petition in such proceeding, deposit said sum with the clerk of this Court to be disbursed by said officer pursuant to the judgment or decree entered in such condemnation proceeding; and that by reason of the exercise by plaintiff of the right to institute this proceeding in condemnation, and the said contract and the other facts and matters aforesaid, these defendants are entitled to an immediate award in their favor in this proceeding in said sum of Thirty-five Thousand Dollars ($35,000.00) with interest thereon from the date of the actual taking of said lands and improvements by plaintiff as aforesaid, to-wit, January 15, 1941, are entitled to have said sum, with interest thereon as aforesaid, forthwith paid by plaintiff to the clerk of this Court for their benefit, and to the judgment and decree of this Court requiring the Clerk to forthwith pay the same over to these defendants; and these defendants state that this Court has no jurisdiction or authority to appoint commissioners herein or to take any other or further steps in this condemnation proceeding except to enter judgment herein awarding these defendants said sum of Thirty-five Thousand Dollars ($35,000.00), with interest thereon as aforesaid, directing that the same be paid by plaintiff into the hands of the clerk of this Court, and ordering, adjudging and decreeing that the clerk of this Court pay the same over to these defendants; and these defendants further state that by reason of the facts and matters aforesaid, plaintiff is estopped to claim that it has any right to proceed in this condemnation proceeding except in accordance with the aforesaid contract, and is estopped to claim that it is entitled to the appointment of commissioners herein, and is estopped to claim that any further steps may be taken or proceedings had herein except to enter judgment [fol. 43] herein awarding these defendants said sum of Thirty-five Thousand Dollars ($35,000.00), with interest thereon as aforesaid, and directing that the same be paid by plaintiff to the Clerk of this Court, and ordering, ad-

judging and decreeing that the clerk pay the same over to these defendants.

Thirteenth: And these defendants further state that they have fully and completely performed all of the terms and conditions of the contract aforesaid thereby required to be performed by them, but that plaintiff has failed, neglected and refused to perform said contract on its part, and has failed, neglected and refused to pay to the clerk of this Court the amount therein agreed to be so paid by plaintiff in the event of the institution by plaintiff of such condemnation proceeding, and that by reason of all of the foregoing these defendants are entitled to have judgment forthwith entered in their favor as aforesaid and to be awarded said sum of Thirty-five Thousand Dollars ($35,000.00), with interest thereon as aforesaid, for the lands described in plaintiff's petition and the improvements that were thereon when plaintiff took possession thereof as aforesaid, and to have the same forthwith paid by plaintiff to the clerk of this Court and to be by him forthwith disbursed to these defendants as aforesaid.

Wherefore, these defendants pray that the Court, without the appointment of commissioners herein, and without other intermediate steps or proceedings herein, at once enter its judgment, order and decree herein fixing the award for the lands described in plaintiff's petition and the improvements thereon when plaintiff took actual possession thereof as aforesaid at the sum of Thirty-five Thousand Dollars ($35,000.00), the amount agreed upon by the parties as aforesaid, with interest thereon at the rate of six per cent. (6%) per annum from and after January 15, 1941, and ordering, adjudging and decreeing that plaintiff forthwith deposit the same with the clerk of this Court, and ordering and decreeing and directing that the same be forthwith disbursed by said officer to these defendants, pursuant to the terms of said contract and of such judgment and decree; and that these defendants be awarded and have such other and further relief and such further orders, judg-
[fol. 44] ments and decrees herein as may be necessary or appropriate to secure to them the said sum of Thirty-five

Thousand Dollars ($35,000.00), with interest as aforesaid, and as may be meet and proper in the premises.

THEO. BRUERE, JR.,
St. Charles Savings Bank Building,
St. Charles, Missouri.

WM. H. ALLEN,
1725 Pierce Building, St. Louis, Mo.

Copy of within answer received this 3 day of September, 1941.

A. G. EDWARDS,
Attorney for Plaintiff
(Special Assistant to the U. S. Attorney)

[fol. 45] W 766 QM 2417 "Exhibit A".

Option to Purchase Land.

Know All Men By These Presents: That the undersigned Dennis B. Pitman and May Dell Pitman, his wife for and in consideration of One Dollar ($1.00), paid by the United States of America, hereinafter referred to as the Government, the receipt whereof is hereby acknowledged, hereby agrees for their heirs, executors and assigns, to sell and convey to the Government for the consideration of Thirty-Five Thousand Dollars ($35,000.00) that certain piece or parcel of land situated in the County of St. Charles, State of Missouri, more particularly described as follows:

Being six tracts of land containing in all 215 acres, more or less, and more particularly described as follows, to-wit:—

A tract of land containing Nine and 67-100 acres, being part of the West half of the Northwest quarter of Section Six, Township 45 N. Range, 3, East, more particularly described as follows to-wit: Beginning in the South line of the Marthasville road at a rock in the Township line, which rock is distance East 4.38 Chains from another rock in the South line of said road set in the Range line, at or near, the Northwest corner of said Section 6, Township 45

N. Range 3, East. Thence from said beginning point S. 4.1-2 E. 40.82 Chains to the South line of said Section 6, an old stone in said South line, from which a Black Walnut bears North 33.1-4, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links. Thence with the South line of said Section West 2.37-1-2 chains to a stake. Thence North 4.1-4 W. Parallel with the first course 40.82 Chains to a stake in the South line of the Marthasville road. Thence East with the South line of said road 2.37-1-2 Chains to the point of beginning. Containing Nine and 67-100 acres. (According to a survey made by Alfred Risks of St. Charles, Mo. on Dec. 13th, 1907. This tract contained Eleven and 246-1000 acres).

First, Part of the southwest fractional quarter of Section Twenty-seven (27), Township Forty-six (46) North, Range Two (2) East, bounded and more particularly described as follows:—Beginning at the southwest corner of said section Twenty-seven (27), a rock, from which a black oak 16 inches in diameter bears S. 54° W. distant 29 links and a white oak 8 inches in diameter bears N. 85° W. distant 25 links; thence North seventeen chains and 90 links to corner, a rock, from which a black oak 12 inches in diameter bears N. 30° E. distant 17 links and a white oak 4 inches in diameter bears S. 13° E. distant 22 links; thence S. 40 ¾° E. twenty-four chains and 9 links to corner, a rock, on the section line between sections 27 and 34 of said township and range; thence West sixteen chains to the place of beginning, containing 14-32/100 acres, more or less, and being the same tract of land conveyed by John W. Callison, and wife to Nancy E. Callison as per warranty deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

[fol. 46] First. A tract of land situated in U. S. Survey No. 1641, Twp. 46 N. R. 2 E. described as follows: Beginning at the intersection of the western line of a tract of land conveyed to J. C. Pitman by David L. Twiehaus and wife, dated Aug. 30, 1870, and recorded in the Recorder's Office of St. Charles County, Mo. in Book 5 at page 276 and the center line of Dardenne Creek, as the same is now located, thence along the western line of said tract, S. 90° 14′ E. 21.37 chains to a stone in the southern line of said U. S. Survey No. 1641 which stone is distant 13.40 chains

N. 80° 09′ E. from the northeastern corner of U. S. Survey No. 280; thence along the southern line of said U. S. Survey No. 1641, N. 80° 09′ E. 21.73 chains to an old stone; thence N. 90° 00′ W. 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

Second: A tract of land situated in fractional Section 24, Twp. 46 N. R. 2 E. described as follows: Beginning at a stone in the southern line of U. S. Survey No. 1641, which stone is distant 13.40 chains N. 80° 09′ E. from the northeastern corner of U. S. Survey No. 280 and from which stone a Blark Walnut 30″ bears N. 9° 00′ W. 51 ½ links; thence S. 9° 14′ E. 10.80 chains to an iron rod; thence N. 80° 09′ E. 17.62 chains to the center line of the former Pitman private read, 16 feet wide; thence N. 0° 19′ E. 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along said Survey line S. 80 09′ W. 19.44 chains to the place of beginning, containing 20 acres. Subject, however, to the right of way out of a county road along the eastern line of said tract.

This Deed of Correction is made for the purpose of correcting the quit-claim deed from Eltin Pitman and Maud Pitman, his wife, and Tarlton E. Pitman and Annetta M. Pitman, his wife, of St. Charles County, Mo. and Halia A. Schneider and Melvin A. Schneider, her husband, of St. Louis County, Mo., parties of the first part, to Dennis B. Pitman and May Dell Pitman, his wife, of St. Charles County, Mo. parties of the second part, dated on Sep. 16, 1936, and recorded in the Recorder's Office of St. Charles County, Mo. in Book 186 page 14, in which deed the consideration was omitted and for correcting the name of Maude Pitman, which should have read Maud Pitman.

Two pieces of land together containing Eighty (80) Acres and being all of lot No. Three (3) as the same is designated and described in an agreed parti on of the real estate of James F. Howell, deceased, dated March 29th, 1854, and recorded in the Office of the Recorder of Deeds of St. Charles County, Mo., in Book B. No. 2 pages 450 and following: conveyed to John Fitz by John L. Moore and Robert B. Frayser, and wives by deed dated June 12,

1865, and recorded in said Recorder's Office in Book U. No. 2 page 163, save and excepting therefrom the public road over said Lot. No. 3 and forty acres off of the west side of said Lot No. 3, conveyed to H. B. Castlio and Mitchell Castlio by Nicolas Zeyen, Administrator of the Estate of John Fitz, deceased, by deed dated Feb. 8th, 1886 and recorded in said Recorder's Office in Book 45 page 209 and by deed of Margaret Fitz, dated Jan. 30th, 1886, and recorded in said Recorder's Office in Book 38 page 108. Except, however, from the above tract, fifty (50) acres sold by Dennis B. Pitman to Boyd Keitel.

All of the South half of the Northeast fractional quarter of Section 36, Township 46 North R. 2 East containing 40 acres, more or less. Also the North half of the Northeast fractional quarter of said Section 36, Township 46 North, Range 2 East, excepting a tract of 11.58-100 acres in the Northwest corner thereof conveyed to Amanda Pitman by Deed from Hiram B. Castlio dated July 18th 1898 and recorded in book 74 page 45 of the Recorder's Office. Also part of survey No. 1798 in Township 46 North, Ranges 2 and 3 East, bounded and more particularly described as follows, to-wit: Beginning at the Southwest corner of the tract hereby conveyed, a rock in the West line of said survey No. 1798 from which a Wild Cherry one inch in diameter [fol. 47] bears South 7.1-2 W. distant 6 links, and a Cotton Wood 4 inches in diameter bears N. 7.1-2 E. distant 18 links. Thence along and with the west line of said survey N. 7.1-2 E. 17 chains and 50 links to corner on same a rock. Thence South 82. 1-2 E, 19 Chains and 5 links to corner, a rock; thence South 7.1-2 W. 17 chains and 41. 2-3 links to corner, a rock, from which a Locust Tree ten inches in diameter bears S.67, E. distant 79 links and a Locust 6 inches in diameter, N. 82.1-2 W. distant 207 links; thence N. 82,1-2 W. 19 chains and 5 links to the place of beginning. Containing 33.1-3 acres, more or less.

The Three tracts of land herein above described as Surveyed by Carr Edwards of St. Charles, Mo. September 21st, and 22nd, 1906 contained 106.36 acres.

They are the same tracts given and devised in the 3rd, clause, as modified by the 2 Codicil, of the Last Will and Testament of Iantha Hiram B. Castlio Decd. To Clara

Wheeler Castlio—Serena Hays—Alletha Castlio. Castlio, and Mary Thomas Bishop. The said Alletha Castlio having subsequently conveyed her undivided interest to the said Mitchell Castlio as per Deed dated August 11th. 1905.

Plot of land 84 x 75. Located between Francis Howell Cemetery and Pitman Road. Row of evergreen trees along road line. If title can be given—cemetery.

Upon exercise of this option by the Government, the undersigned agrees to pay to R. Newton McDowell a commission of five per cent (5%) of the gross sales price as full payment for the services of said R. Newton McDowell in procuring such sale, preparing the deed or deeds for the conveyance of said land and arranging for settlement and closing of the transaction.

[fol. 48] The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

The undersigned further agrees that they will execute and deliver a general warranty deed conveying the fee simple title to the above described land to the United States of America, free and clear of all taxes, liens and encumbrances of every kind and character, including stamps, taxes and etc.; and the undersigned will also furnish, without cost to the Government, a certificate of title of The Kansas City Title Insurance Company to the said land satisfactory to the Attorney General of the United States and after examination of the deed and certificate of title by the Attorney General, the undersigned will have said deed recorded and will furnish a certificate of title of the said The Kansas City Title Insurance Company show-

ing title to be good and marketable as vested in the United States of America, free of all liens and encumbrances. In the event the title shall be unmerchantable, the undersigned agrees to make said title merchantable at his own expense.

Upon furnishing of final certificate of title as above showing title to be vested in the United States of America, the agreed purchase price above mentioned will be paid by the Government to the undersigned.

If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all [fol. 49] the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

This Option is executed in triplicate at St. Charles, Missouri, this 7th day of November, 1940.

DENNIS B. PITMAN,
MAY DELL PITMAN.

Witness:
Theo. Bruere, Jr.
J. C. Baker.

Accepted by and on behalf of the United States of America this 14th day of November, 1940.

M. D. VALLIANT,
Colonel, Q.M.C. United States Army.

[fol. 50] Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option.

(Filed April 17, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for defendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest, and as reasons for said motion states:

(1) That this suit was filed by plaintiff to acquire, by condemnation, the real estate described in the petition filed in this cause, that a Declaration of Taking was filed and the sum of $14,600.00 was deposited in the Registry of the Court as the estimated just compensation for said real estate;

(2) That prior to the filing of the petition in this cause the defendants and the plaintiff, through the War Department, had executed an option contract for the purchase by the United States of America from the defendants the said real estate for the sum of $35,000.00, being the amount of compensation fixed in said option contract;

(3) The United States Supreme Court in the case of Muschany vs. United States, 89 L. Ed. Adv. Op. 492 (1945) has held an option contract to be valid and binding, [fol. 51] which option contract is identical with the provisions of the option contract in this case with the exception of the names of the owners, the description of the property and the amount of compensation;

(4) That the plaintiff, by virtue of this proceeding, is entitled to a judgment in condemnation against the lands described in plaintiff's petition for the purposes therein defined and against the defendants named in this cause, and against each and all of them, jointly and severally, as their rights may appear, and that the defendants, and each and all of them, jointly and severally are entitled to compensation in solido in the sum of $35,000.00, without interest, being the full amount of the compensation mentioned in said option contract;

(5) That R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, under the terms and conditions of the said option contract, have, or may have, some right, title or interest in and to the said sum of $35,000.00 mentioned in said option contract.

Wherefore, plaintiff moves the Court to enter judgment in this cause for the condemnation of the said real estate, fixing the compensation to be paid by plaintiff to the defendants in the sum of $35,000.00, and directing plaintiff to pay into the Registry of the Court the deficiency of $20,400.00 and to make an order citing all persons and corporations, including the said R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, claiming an interest in the said fund to appear in this Court and to set up and file their claims therefor.

HARRY C. BLANTON,
United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Dated this 17th day of April, 1945.

[fol. 52] Order Setting Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option for Hearing.

(Filed April 17, 1945.)

On oral motion of the plaintiff, by its attorneys, it is Ordered by the Court that the Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option filed by plaintiff in this cause be and the same is hereby set for hearing on the 7th day of May, 1945;

It is further Ordered that the Order of Continuance entered in this cause on the 5th day of February, 1945, continuing this cause to May 3, 1945 and the same is hereby set aside;

And it is further Ordered that the plaintiff give notice of the date fixed for the hearing of said motion to all defendants in this cause and to their attorneys of record by mailing to each of said defendants, whose places of residence are known, and their attorneys and to R. Newton McDowell and The Kansas City Title Insurance Company, a Corporation, a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option and a copy of this order, and by posting in the office of the Clerk of this Court in the City of St. Louis, Missouri a copy of said Motion for judgment for plaintiff in condemnation and for defendants fixing compensation by option, together with a copy of this order, at least ten days before the time fixed in this order for the hearing of said motion.

Dated this 17th day of April, 1945.

GEO. H. MOORE,
United States District Judge.

[fol. 53] **Answer of Defendants Dennis B. Pitman and May Dell Pitman, his wife, to Plaintiff's Motion for Judgment for Plaintiff in Condemnation and for Defendants Fixing Compensation by Option Without Interest; and Counter-Motion of said Defendants for Judgment with Interest.**

(Filed May 4, 1945.)

Come now defendants Dennis B. Pitman and May Dell Pitman, his wife, in response to the motion heretofore filed by plaintiff in this cause asking the Court "to enter judgment in this cause for the plaintiff for the condemnation of the real estate described in the petition filed in this cause and for defendants fixing defendants' compensation for the taking of said real estate in the amount named in the option, without interest," and for their answer to said motion these defendants say:

1. They admit that the suit was filed by plaintiff to acquire said real estate by condemnation, that a Declaration of Taking was filed and the sum of $14,600.00 was deposited by plaintiff in the registry of the Court as the estimated just compensation for said real estate.

2. They admit that prior to the filing of the petition in this cause these defendants and the plaintiff, through the War Department, executed the contract referred to in said motion as the option contract for the purchase by plaintiff from these defendants of the said real estate for the sum of $35,000.00.

3. They admit the statements contained in paragraph numbered 3 of plaintiff's said motion.

4. They admit that plaintiff, by virtue of this proceeding, is entitled to judgment in condemnation against the lands described in plaintiff's petition, but deny that plaintiff has any right to avoid the payment of interest on that portion of said sum of $35000.00 which plaintiff, upon the filing of said Declaration of Taking, failed to pay into the registry of the Court and which plaintiff now offers to pay into the registry of the Court, to-wit, $20,400.00, and state that it was plaintiff's duty under the terms of said contract to pay into the registry of the Court, upon the filing of said Decleration of Taking, said entire sum of $35,000.00, and that under the terms of the Federal Statutes authorizing the taking of land by the United States in a condemnation proceeding on declaration of taking, to-wit, Section 258a of Title 40 U. S C. A., these defendants are entitled to have the compensation for the taking of said land fixed at said sum of $35,000.00 plus interest on said sum of $20,400.00, at the rate of 6% per annum, from and after the time of the taking by the filing of said Declaration of Taking and the entry of said judgment thereon, [fol. 54] to-wit, on the 19th day of June, 1941, until payment in full of said compensation be made.

5. And these defendants move and pray that the Court, by its judgment herein, fix the compensation to be paid by plaintiff for the taking of said land at the sum of $35,000.00 plus interest on said deficiency of $20,400.00, at the rate of 6% per annum, from and after said June 19, 1941, and order and require that plaintiff pay into the registry of the Court said further sum of $20,400.00 with interest thereon at said rate from and after said June 19, 1941, and that, upon such payment being made, the funds that shall then be in the registry of the Court herein be,

by the proper orders and judgment of this Court, disbursed and paid over to these defendants.

WM. H. ALLEN,
Attorney for defendants Dennis B. Pitman and May Dell Pitman.
(Wm. H. Allen, 112 N. 4th St., St. Louis 2

Copy of the foregoing answer and motion is hereby acknowledged this .... day of May, 1945.

.....

[fol. 55] (List of Checks deposited in Registry of District Court to cover certain Lands in Weldon Spring Ordnance Project.)
(Filed May 17, 1945.)

In The United States District Court
Eastern District Of Missouri
Eastern Division

Weldon Spring Ordnance Project

Cases No.	767	— Deficiency —	$26,900.04	818	— Def. —	$114.00
	765	— " —	7,028.20	817	— " —	8,140.00
	766	— " —	22,365.00	820	— " —	19,193.00
	763	— " —	3,125.00	822	— " —	6,760.00
	764	— " —	22,791.00	824	— " —	4,770.00
	771	— " —	6,170.00	823	— " —	13,892.00
	772	— " —	660.00	854	— " —	6,100.00
	777	— " —	5,855.00	877	— " —	3,725.00
	778	— " —	2,935.20	865	— " —	567.00
	779	— " —	3,967.83	866	— " —	7,510.00
	780	— " —	2,000.00	863	— " —	932.50
	781	— " —	875.00	873	— " —	7,457.20
	782	— " —	5,792.00	872	— " —	6,900.00
	783	— " —	5,700.00	858	— " —	3,443.00
	784	— " —	4,368.00	860	— " —	8,040.00
	785	— " —	34,250.00	859	— " —	16,480.00
	786	— " —	2,630.18	862	— " —	2,200.00
	796	— " —	19,694.00	879	— " —	1,440.00
	805	— " —	21,511.25	875	— " —	5,729.00
	812	— " —	6,080.00	876	— " —	7,695.00
	810	— " —	110.00	856	— " —	4,300.00
	813	— " —	4,428.75	868	— " —	1,380.00
	814	— " —	7,283.00	869	— " —	3,697.00
	797	— " —	3,825.00	960	— " —	48,500.00
	806	— " —	2,940.00	978	— " —	14,132.00

808	"	11,140.00	985	"	1,240.00
811	"	5,435.00	983	"	21,374.25
834	"	4,878.00	984	"	1,500.00
841	"	8,670.00	999	"	2,140.00
833	"	2,150.00	1000	"	500.00
840	"	3,580.00	1001	"	2,500.00
832	"	760.00	1002	"	11,115.25
827	"	7,940.00	1003	"	29,297.00
843	"	4,620.00	979	"	7,120.00
830	"	1,200.00	981	"	25,000.00
829	"	312.00	980	"	16,312.50
839	"	4,860.00	989	"	3,100.00
838	"	2,440.00	986	"	2,600.00
844	"	1,493.36	987	"	18,000.00
835	"	6,960.00	992	"	933.00
826	"	3,760.00	993	"	3,617.00
852	"	17,460.00	994	"	1,100.00
853	"	850.00	995	"	16,000.00
774	"	1,563.00	997	"	20,400.00
798	"	8,260.00	991	"	1,750.00
803	"	4,100.00	1006	"	3,600.00
789	"	10,820.00	1010	"	32,804.45
792	"	9,775.74	1015	"	23,129.45
800	"	36,720.00	1014	"	450.00
790	"	8,440.00	1021	"	7,140.00
791	"	9,042.00	1019	"	12,174.00
793	"	5,100.00	1020	"	6,170.20
794	"	17,985.00	1648	"	1,670.00
804	"	14,780.00	1652	"	2,723.00
819	"	3,050.00.			

$920,085.35

[fol. 56] Check No. 8,051,506 $87,595.70
8,051,507 48,500.00
8,051,508 4,393.00
8,051,509 115,932.50
8,051,510 182,604.74
8,051,511 85,468.10
8,051,512 229,583.57
8,051,513 7,028.20
8,051,514 83,798.54
8,051,515 22,365.00
8,051,516 26,900.00
8,051,517 22,791.00
8,051,518 3,125.00

$920,085.35

of the Treasurer of the United States, in the sum of $920,085.35, to the order of the Clerk of the United States District Court for the Eastern District of Missouri, Eastern Division, deposited by the plaintiff for the lands described in the petitions, the aforesaid sum of $920,085.35 being deposited by the plaintiff in the Registry of the Court herein as to the aforesaid lands, for the use and benefit of the person or persons entitled thereto, the same to be applied under orders of this Court.

HARRY C. BLANTON,
United States District Attorney.

Received the above mentioned checks and deposited same in the Registry of this Court, this 17th day of May, 1945.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.

[fol. 57] Opinion of Court.

(Filed June 8, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,

vs.

Certain Lands in St. Charles County, Missouri, Known as The Weldon Spring Area, Defendants.

No. 765; No. 767; No. 771;
No. 777; No. 781; No. 785;
No. 791; No. 797; No. 805;
No. 807; No. 810; No. 811;
No. 817; No. 827; No. 835;
No. 841; No. 865; No. 874;
No. 875; No. 877; No. 985;
No. 987; No. 991; No. 995;
No. 997; No. 1000; No. 1001;
No. 1010; No. 1015; No. 1021.

All of these cases, except Numbers 807 and 874, now come before this Court on motions filed in each by the Plaintiff, United States of America, for entry of judgment

in the amount of the compensation fixed in certain option contracts, but without interest thereon, and certain counter-motions by Defendants asking for judgment with interest on the principal amounts since the date of taking. Numbers 807 and 874 (Muschany and Andrews cases) are here on motions by the Plaintiff to delete interest from judgments already entered, but the issues therein presented differ only slightly. This opinion is to be considered as filed in and ruling all of the above numbered separate proceedings.

The lengthy history of this condemnation litigation is already adequately documented in the Reports and needs no further recitation. The facts of the original proceedings appear in the contrary opinions of District Court Judges Davis and Collet, United States vs. Certain Land Situate in St. Charles County, Mo., et al., 46 F. Supp. 921, and United States vs. 94.68 acres of Land in St. Charles County, Mo., et al., 45 F. Supp. 1016; in the Eighth Circuit Court of Appeals opinion in United States vs. Muschany, 139 F. 2d, 661; and in the opinion of the Supreme Court of the United States in Muschany vs. United States, [fol. 58] 89 L. Ed. 492. In addition, the facts surrounding the present motions are ably stated in the opinion of Judge Hulen filed in Division No. 2 of this Court on the 4th day of May, 1945, covering identical motions in companion cases to those now before this division. The issues here presented differ in no respect from those decided by Judge Hulen and, with the above references to source materials where the facts may be found, the Court will state its views and holding on the issues presented, which, I deeply regret, are not in accord with those of my learned brother Hulen.

After careful consideration of the various submitted briefs of counsel, the real issues presented for decision appear to be four in number. First, the question is raised whether there is anything in the facts of these cases that makes them a particular type of condemnation proceeding to which that part of the Statute allowing interest to landowners does not apply; second, whether if in such a condemnation proceeding interest is ever allowable, these landowners have by any contract, election, waiver, stipu-

lation or option done anything to waive, give up, or bar themselves from, a right that they might otherwise have: third, whether, if the landowners are entitled to interest, they are entitled to it from the date of the actual taking or only from the date of the filing of the declaration of taking; and, fourth, whether the original decrees entered only in the Andrews and Muschany cases (those appealed to the Supreme Court), which expressly provide for interest, are final and binding on the interest issue in those two cases and, also, binding as precedent or through special agreement of the Government in all the other cases. The Court will discuss the above issues seriatim.

[fol. 59] There is no dispute between the parties that the general rule is (absent a contract or statute evincing a contrary intent) that interest does not run against the United States upon claims or contracts even though there has been an unreasonable delay or default in the payment of the principal upon the part of the Government. Tilson vs. United States, 100 U. S. 43; United States vs. North America Company, 253 U. S. 330; Angarica vs. Bayard, 127 U. S. 251; United States vs. North Carolina, 136 U. S. 211; Smyth vs. United States, 302 U. S. 329. Likewise, there is no dispute that in ordinary condemnation proceedings an exception is made which Congress has by statute approved and codified. Title 40 U. S. Code, Section 258a; Seaboard Railway vs. United States, 261 U. S. 299; United States vs. Rogers, 255 U. S. 163. The parts of said Statute material here are:

"In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. * * *

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation

stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but [fol. 60] interest shall not be llowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency." (Emphasis the Court's.)

The difference of opinion between the parties first arises on the question of whether the particular facts here cause these proceedings to be a type of condemnation proceeding to which that part of the statute relating to interest is inapplicable.

The Court is of the opinion that under the policy of Congress, as expressed by the above statute, and under the facts, there is no valid reason why these landowners should not receive the benefit of the statutory exception. It is true that the negotiations between the Government and the landowners originally resulted in option contracts. It is also true that those contracts provided for condemnation proceedings under certain restricted circumstances.

Those facts, however, do not change the circumstance that there are now before this Court condemnation proceedings brought under the general condemnation statute, and in no respect different from any other like proceedings except in the method of ascertaining the value of the land. These are not friendly condemnation proceedings for the purpose of clearing title but, as the long history of litigation prior to these motions will readily prove, they are as completely antagonistic and adversary actions as this Court has ever seen. These proceedings for condemnation were certainly not brought within the terms of the option con- [fol. 61] tracts, since those options provide only for friendly proceedings "if for any reason the title to the land is not approved by the Attorney General." It is certain that no other type of condemnation proceeding was within the contemplation of the parties when the option contracts were entered into. The history of these cases shows that the Government brought these actions as straight adversary condemnation proceedings, in complete disregard of the option contracts, and that the entrance of those contracts into the issues was by way of equitable defense on the part of the landowners. Those option contracts have played a part, therefore, in these proceedings to the extent of fixing the worth of the land, but it would be completely erroneous to say that they in any way make these a different type of condemnation proceeding, or that those options have been specifically enforced in their entirety.

Such being the facts, no reason appears on the face of the Statute why these landowners, different from any other landowners, should be divested of the right to interest on the deficiencies of their awards. The statute merely provides that "said compensation shall be ascertained and awarded in said proceeding and established by judgment". No distinction is made in the statute between different methods of ascertaining the compensation. Had the value of the land here been found by a jury, by commissioners, or by stipulation filed in the case, the statute in the absence of express waiver would make no distinction in regard to interest in any case where a deficiency in the deposit existed. Why, therefore, should there be any distinction because the value of the land was fixed by an agreement

prior to suit between the parties, which agreement, it should be noted, was enforced against a recalcitrant Government on equitable principles?

[fol. 62] These landowners certainly come within the spirit of the statute and the intent of Congress. The history of the statute, as admitted by the parties, shows that its purpose was to grant interest not as interest, but as part of the compensation, i.e., to compensate for the loss of the use of the land, or the use of the value thereof in money, pendente lite, Seaboard Railway vs. United States, supra; United States vs. Rogers, supra. The properties of these people were taken from them some time prior to the institution of these suits and only since submission of the present motions has the Government begun to deposit the full amounts due under the options. Thus, they have lost both the use of the land and the use of their money, and it was just such a situation as this that Congress intended to remedy by making the unusual exception to the rule that the United States pays no interest.

To say that this is a different type of condemnation proceeding pursuant to contract is to ignore the fact that the contracts never have been enforced in full and never will be. The original proceedings were not suits for specific performance of the contracts because, had they been, the result should have been the dismissal of these actions. On equitable principles the amount of compensation was fixed and charged against the United States under the terms of the options, but the United States itself has defaulted and still defaults on many of the terms of the contracts. For example, it has not—as the contracts provided—accepted deeds and paid the agreed purchase price upon the furnishing of satisfactory certificates of title. That it can and will never do. Neither has it brought condemnation proceedings for the sole reason assigned in the options for doing so. Nor has it, when bringing condemnation proceedings, followed the terms of the contracts, which provide that—

"The Government will proceed to acquire the land by condemnation proceedings instituted in the District Court [fol. 63] of the United States in which said property is located, under a consent verdict fixing the award at the

agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court." (Emphasis the Court's.)

The requirement for a deposit upon the filing of the petition has certainly never been performed by the Government and never can be. The Government has made no offer to consent to a verdict and yet, through its Agents, contends that it simply wishes to go through with the original contract. That, it is manifest, is impossible.

The essential error in the position of the Government lies in the assumption that the effect of the opinion of the Supreme Court was to convert these condemnation proceedings back to simply technical processes for the perfection of title in a proceeding contemplated by the parties and within the terms of their contracts; or, stated in another way, to convert these proceedings into an identity with an action in the Court of Claims for specific performance of a contract. This argument erroneously assumes, first, that the Supreme Court had the power and desire to restore the status quo ante; secondly, that by striving and prevailing for the prices promised them by their Government (in the adversary proceeding forced upon them) these landowners somehow bound themselves to all the concomitants of a discarded contract procedure and simply turned back the clock some years, thereby wiping out all that had intervened; and, thirdly, that there is something inconsistent in allowing the landowners their promised price as a matter of equity and also giving them the benefits arising solely by statute from a method of procedure which was forced upon them by the Government. The reasons why the prices provided in the options were compulsorily imposed upon the Government by the Courts are that it was felt unconscionable and contrary to public interest to allow the Government, after accepting unusual benefits, to renege on its solemn word, and justice [fol. 64] demanded that the landowners be given by way of ascertainment of value in condemnation that which they would have received had not the Government breached the contracts. In other words, there is actually nothing in the record of this case to show that the contracts per se

were to be enforced. The Government was merely allowed to follow its chosen and elected course subject only to the duty to give the promised price. Any concomitants arising, however, from that elected course (i.e., interest) were not negatived or touched upon. Since, therefore, the Government has elected its remedy of condemnation, this Court can see no valid distinction between these proceedings and any others, unless there is something in the record to show that the landowners here have waived a right that they might have otherwise possessed. The Court will next address itself to that question.

The option contracts involved in these cases can be the only evidence of any such waivers or elections; and the Government here makes no contention that any circumstances other than those contracts constitute any such waivers or agreements. Thus, the question simply is, did the landowners by entering into such option contracts thereby stipulate and agree that no matter what happened the sums therein specified should be the total compensation for their lands? This Court, in answer to that question, can find nothing on the face of those option contracts, or from the surrounding circumstances, to indicate any such intention on the part of the landowners, or, for that matter, the Government. Had the contracts been performed, either by conveyancing or by a friendly condemnation proceeding, as provided in the options, the argument advanced by the Government might have strength. But, as it was, the parties were contracting for the sale of their land and they naturally made no provision for interest. [fol. 65] Had the contracts been performed in the manner contemplated on their face they would have needed no interest and been entitled to none. However, those contracts were not executed and never will be. How, therefore, can it be said that agreements to take no interest under the condemnation statutes can be found in contracts whose subject matter was something totally different than the proceeding that was subsequently brought? At the time the option contracts were executed the present proceedings were certainly not in the minds of any of the parties, and their possibility is no where reflected in these contracts. The landowners stated what they would take for their land in certain eventualities, which eventualities

were the delivery of deeds in return for money (or, a friendly title clearing condemnation in a certain event). Neither of these eventualities ever occurred, but a totally different, completely [unforseen] and most unwelcome litigation was commenced. The general law of contracts would certainly forbid a holding which bound a contracting party by an instrument the subject matter of which was entirely different. The Government not the landowners, breached the contract, and that contract is dead and will never be performed except that the landowners, by reason of the final holding of the Supreme Court of the United States, will be put in a monetary way in the same position as if the contracts had been executed. The question of interest in this adversary condemnation proceeding is not within the four corners of the contract at all, and is to be determined by operation of law.

Argument has been presented in behalf of the landowners that even if the option contracts could have some relevancy to the question of interest under the condemnation statute, that they have relevancy only to the extent that in condemnation they show an intent to fix the value of the land but not the total compensation therefor. This [fol. 66] argument is based on the contention that there is a difference in condemnation between the words "value" and "compensation", and that the word "compensation" includes not only the value found by the trier of the facts but also any additional items required by law, such as the statutory interest. A decision on this problem, in view of the preceding statements of this opinion is, of course, not necessary, since the Court has already decided that the contracts have no bearing at all on the interest question. However, the Court wishes to point out that it is in agreement with this contention insofar as it believes that if by any stretch of the imagination it can be held that the parties were contracting in contemplation of an adversary proceeding in condemnation, then they were contracting only to the extent that they were fixing the value of the land in the same manner that Commissioners or a Jury would fix the same, and without any stipulation to cover the entire condemnation proceeding (includ-

ing matters like interest, which are handled by operation of the Statute). The option contracts, when they speak of the contemplated friendly condemnation to clear title, provide for "a consent verdict fixing the award at the agreed value". They further provide for an immediate deposit of that valuation. Certainly, under the terms of the Statute where the Government agrees to and does deposit an agreed valuation there can be no question of interest. With this in mind the landowners' agreement to a value would have constituted their entire compensation because of the contemporaneous agreement of the Government to instantaneously pay in that value and cut off the right to interest. Nowhere, however, can words be found that show a contemplation by the landowners that they are fixing the possible total compensation that they would take in condemnation regardless of whether the Government, in accordance with its mutually dependent promise, paid in the money subject to the landowners right of user.

[fol. 67] It should be noted, before turning to a consideration of the remaining stated issues, that the Court has found, after consideration of the various authorities cited, no binding authority on the previously discussed issues, and feels that in its decision interpreting the Statute under the facts the court must and is at liberty to arrive at its conclusions independently. All of the authorities cited by the Government to the effect that interest is generally not allowable against the United States, except where contract or statute so provides, are of interest, but actually of no assistance to the Court in the cases at bar.

The only authorities relied on by the Plaintiff that the Court has found to even touch upon the propositions here are United States vs. 3.25 Acres of Land in Seneca County, New York, 53 F. Supp. 884, and United States vs. Certain Lands in St. Louis, 58 F. Supp. 305, both District Court cases, and the latter decided by Judge Duncan of this District. Although neither is in any way decisive, since their special applicability has been strongly urged, a statement of the Court's views on them is made necessary.

The Court believes that the issues involved in the case before Judge Duncan were not at all the same as those

here presented and that that case is so distinguishable as to be of no value as even influential authority. That suit was begun as an ordinary adversary condemnation, but while pending a proposition was made by the owner of the land for settlement of the case. A settlement was agreed upon, accepted, and a judgment rendered for the exact amount of the contract. A motion was filed by the landowners asking for interest from the time of the entry of judgment until payment, on the theory that the Government had unreasonably delayed the payment. Interest was denied by the Court. First, it should be noted that the interest question arose from a demand for interest after entry of judgment, and not before. Second, the [fol. 68] contract, in the form an accepted offer of settlement filed in the case, provided that—

"The consideration hereinabove set forth shall be the amount of the award to be decreed for all damages and compensation by reason of the taking of said lands by such judicial proceedings and we hereby agree that this offer to sell, if accepted, shall, without more, constitute a stipulation, which may be filed in said suit as final and binding evidence of the award to be made in such proceedings and paid into Court for the benefit of all persons entitled thereto."

Thus, when the contract was made, an adversary proceeding was not only in mind but was actually the subject matter of the contract. That contract was a compromise, and that with which they were dealing was well within the minds of the landowners. If they agreed to accept the sum named in the settlement for "all damages and compensation" they would certainly be presumed to include in their computations of what they would take not only the original value of the land but any other claims they might have had to that date against the Government, such as interest (or compensation for the deprivation of use pendente lite). L. C. 307, Judge Duncan states:

"The difficulty with defendant's position is that by its own action it removed itself from the provisions of the statute. If this statute were applicable here defendant would be entitled to interest on $35,000 from the date of taking on June 19, 1939, until the date of the payment,

August 14, 1944, but defendant makes no such claim. On the contrary, it bases its claim upon the ground of unreasonable delay in the payment of the amount agreed upon, and for which judgment was entered. It could make no other claim in view of the clear, unambiguous statement in its offer that: "*** the amount of the award to be decreed for all damages and compensation by reason of the taking of said land***. (Emphasis supplied)

From this language it must be determined that the defendant's offer was a full and complete offer, not one fixing an amount as of the time of taking, but as of the time of the acceptance and payment."

From the above quotation it can be clearly seen that the [fol. 69] real basis of decision was a finding of fact that the landowners had voluntarily given up and waived any right they had, and that is just exactly what this Court finds that the landowners in the cases at bar did not do. There is no difference to be found in that opinion as to the law, there is simply a factual situation not here present. It should also be noted about that case, that there the landowners did not petition clearly for interest under the statute, but went outside of it relying on alleged unreasonable delay, and, as before noted, it is clearly the law that no matter how arbitrary or unreasonable the delay and how great the hardship imposed, the United States may not be forced to pay interest absent a statute or contract providing therefor. That case was decided on its facts, and the facts in the cases at bar are in no way identical.

The other District Court case, United States vs. Certain Lands in Seneca County, New York, supra, may be more in point, it is true, but still is essentially distinguishable from the cases at bar for the same reason as Judge Duncan's opinion. Although the exact fact situation present in that case is not made clear by the opinion, it should be noted that Judge Burke seemed to be of the very definite view that that proceeding was brought completely within the terms of the option contract, and not, as in the cases at bar, in derogation and denial of those contracts. The option provided, as here, for friendly condemnation to clear title

and although the opinion does not show the Government's motive in bringing the matter to Court, surely it must be presumed, since Judge Burke seems to so imply, that the action was brought within the rights given by the contract. All through the opinion appears the assumption that a proceeding contemplated by the option had occurred and that, therefore, the contract should bind. This is best illustrated [fol. 70] by the very words of the Court, l. c. 885:

"By agreement of the parties, therefore, it was left to the determination of the United States, through its officers in charge of the matter, to determine, notwithstanding the prior acceptance of the option, whether the title was unsatisfactory for purchase by deed. By express agreement the Government had the right, at its election, to acquire title by condemnation and the church agreed in that event to cooperate to that end and the option price was to constitute conclusive evidence of the true value of the whole property. When reasonably and fairly exercised, as it appears to have been in the light of the matters set forth in the motion papers, the determination to acquire title by condemnation is not open to question and when resorted to, the express agreement of the parties as to compensation must control. That agreement was that the option price 'shall be final and conclusive evidence of the true value of the whole of said property and of the proper award to be made in such proceedings'. The possibility of the Government electing to acquire title by condemnation was not an unforseen circumstance and in such event, that there would be some delay in the proceedings might reasonably have been inferred. The option, however, contained no provision for adding anything to the award to compensate for delay in the payment of compensation. The Court may not supply what the parties themselves have failed to include in the agreement." (Emphasis the Court's)

That being the situation, the case can give no assistance where, as here, the Government itself departs from the contract, and makes its performance impossible, and does not exercise any contract right, in the words of Judge Burke, "Reasonably and fairly".

Attempts have been made to show guiding principles in the Supreme Court opinion in Muschany vs. United States,

supra. The Court, however, can find no guidance therefrom and is certain that any language of the Supreme Court that has been used by either of the parties to this suit to justify their conclusions is not pertinent, since it is only too clear that Supreme Court of the United States was in no manner addressing itself to the issues now raised by these motions.

[fol. 71] Since the submission and briefing of these motions this Court's attention has been directed by defendants to the decision of the United States Circuit Court of Appeals for the Fifth Circuit in U. S. vs. Marion Baugh, et al., ... F. 2d....., decided May 4, 1945. As in Judge Duncan's opinion in US vs. Certain Lands in St. Louis, supra, the suit was commenced as an ordinary condemnation and a stipulation was subsequently filed. The Fifth Circuit held that the landowners were entitled to interest from the filing of the stipulation until deposit. US vs. Baugh, et al., is of interest not because it necessarily expressly rules the issues here, but because it contains thought closely allied to this Court's holding. The stipulations there waived hearing before commissioners, consented to decrees vesting title, and agreed that certain sums be adjudged as just compensation. They further read:

"The foregoing stipulation is made to expedite the vesting of title in the plaintiff, the United States of America, and the payment of just compensation for such lands to the owners thereof, and it is the purpose and intent hereof to vest in the Court, without any further proceeding and notice, full authority to close such action by final judgment and to disburse the funds in accordance therewith."

After the filing of these stipulations an eight month's delay ensued before deposit by the government, although possession had been taken when suit was commenced. Judge Waller discusses the effect of these stipulations, l. c. ....., and the quotation suffices to illustrate the analogous reasoning to this court's:

"In the present case the government did not take a deed from the landowner as in an outright purchase, but it acquired title and possession by condemnation. The stipulation merely had the effect of relieving the government from having to make proof as to what was just compensation and of running the risk of having an amount fixed which might

be unsatisfactory. The stipulations eliminated controversies, but otherwise the condemnation suit proceeded to final judgment. There is no mention in the stipulations that in-
[fol. 72] terest was, or was not, included. Just compensation in condemnation cases means just compensation at the time of taking of possession, and when the parties reduced to writing a stipulation fixing just compensation there seems to be no reason to conclude that the landowner impliedly waived any legal right. In view of the several express waivers made in the writing it will not be presumed to have contained any implied waivers of substantial constitutional rights." (Emphasis the Court's)

Again, the learned Judge said, l. c.....:

"But the government failed to pay for seven or eight months thereafter, and there is neither proof nor presumption that the landowners intended to waive interest in the future, particularly for such an indefinite and unreasonable period, and such waiver cannot be read into the agreement. Their right to have interest is found in the Constitution and is neither found nor lost in the contract.

The Constitution no more permits the deprivation of money without just compensation than it does the deprivation of the use of land without just compensation." (Emphasis the Court's)

Although the facts are different, the case is sound authority for this Court's holding that where a contract fixes the value of the land, the presence of such contract does not affect the matter of interest, which is governed by operation of law.

It is further of interest to note that the Court in US vs. Baugh, states, l. c.....:

"The settled law of the land at the time a contract is made is a part of the contract and must be read into it."

This is in direct answer to the plaintiff's underlying argument in the cases at bar that the contract upon which an award is based must provide for interest for it to be allowable. It would seem, however, that the rule is, to the con-

trary, that a contract is presumably made in view of the law existing (which gives a right to interest) and if this presumption is to be altered, the contract must so provide.

[fol. 73] The third issue, as above stated, is whether, having decided that the landowners are entitled to interest, they are entitled to interest from the date of actual taking of the land, or from the date of the filing of the declaration of taking in this Court. Here, it is the Court's opinion, that the latter date must govern. Although it is true that the Government went into possession of these lands sometime prior to filing of these condemnation suits, and withheld the use of the land from the landowners during that intervening period, it is also true that the right in the landowners to interest now is bottomed upon the Statute. This Statue is in derogation of the general rule that no interest is allowable against the sovereign, and strict conformity must, therefore, be required in the application of the exception to these cases. For any loss of the use of their lands after the actual taking but prior to the filing of the declaration of taking, the landowners right lies outside of the condemnation laws and in contract, and they must, therefore, go uncompensated in the same manner that persons dealing with the sovereign in matters other than condemnation receive no interest.

Finally, considering the fourth issue, it has been argued that since the original decrees, entered in the Muschany and the Andrews cases (those appealed to the Supreme Court), provided a judgment for the principal amount of the options plus interest, and since those decrees have been affirmed by the Supreme Court of the United States, that the question of interest is res adjudicata in these cases at least. Additionally, it is argued in this line, that those decrees form influential or binding precedent for all of the other cases and that, further, because of some commitment by counsel for the Government the landowners in the other cases are en- [fol. 74] titled to the same treatment in all respects as Muschany and Andrews.

The question of whether interest is res adjudicata in the Andrews and Muschany cases depends essentially on whether those decrees were, in the form written, affirmed by the Supreme Court, or whether they were made subject to re-

vision or re-entry. The Circuit Court of Appeals, of course, reversed the findings and decrees in those cases, which would have the effect of setting the said aside. The Supreme Court, however, reversed the Court of Appeals and in its mandate ordered that the Muschany and Andrews cases be remanded to the District Court for further proceedings in accordance with its opinion. Although it is true that the Supreme Court did not expressly state that the decrees in the form written were affirmed, it appears that such is the undoubted effect. A reversal of the Court of Appeals must, of necessity, reinstate the rule of the District Court if nothing more is done. The order of the Supreme Court, remanding to the District Court for further proceedings in accordance with its opinion, can only mean that since the opinion was in accord with the District Court that the latter court should proceed as it had been proceeding prior to appeal. Although the language of the Supreme Court's mandate may not be expressly an affirmance, it cannot be interpreted in any other way, since there are no further proceedings to be had other than execution of the judgments previously entered.

The Court recognizes, however, that the issue of interest was not raised before either of the appellate courts, and that neither opinion adjudicates that question. However, that is not the fault of the landowners since the original decrees gave them interest, and those decrees became final unless attacked and set aside on appeal. In view of the Court's [fol. 75] holding on the other issues previously discussed in this opinion, a decision of the present issue is, of course, not necessary in order to hold with the landowners. However, the Court feels that so far as the Andrews and Muschany cases are concerned justice requires that the landowners be given the benefit of the Government's failure to seek reversal of the decrees already entered in their favor. The Government, it appears to this Court, participated in an appeal through two courts, alleging error committed by this court. The question of interest was squarely present in the record and the Government could have attacked that during the same appeals. Now, however, having been defeated on the question of the validity of the option contracts the Government seeks to pick another point in the original decrees which it believes erroneous and attack the landown-

ers on that. Such procedure certainly is violative of all tenets of appellate procedure.

As for the effect of this upon the other cases in which no decrees were entered, it certainly cannot be said that the opinions of the Supreme Court in the Muschany and Andrews cases form any precedent on the interest question. The issue of the interest awards not having been attacked on appeal, and the opinions of both the Court of Appeals and the Supreme Court being absolutely silent thereon, it would, indeed, be erroneous to say that because the Government neglected to allege an error and obtain a decision on the interest provisions in the Muschany and Andrews decrees that they have thereby made binding or even influential law for other cases.

However, aside from that question, there is the suggested commitment of the Government, which would cause all other cases to follow the exact result of the Andrews and Muschany cases. This Court feels that in all probability good conscience might dictate that all landowners should be given the same treatment as those in the test cases, since they [fol. 76] doubtless failed to press their cases to judgment in reliance on an assumption that all cases would result identically. However, the Court further feels that no agreement by the Government intended to cover the question of interest has been shown and is, therefore, not disposed to hold that the Government is bound in that regard. Adequate reasons have been stated elsewhere in this opinion for allowing interest to all landowners, and the Court, therefore, must rule this issue as to all landowners other than Muschany and Andrews against the defendants.

In conclusion, therefore, the Court is of the opinion that the landowners are entitled to entry of judgments which shall include interest upon the deficiencies in their awards from the dates of the filing of the declarations of taking in these cases. The Court is duly appreciative of the position of the Government and the vigilance of its officers in protecting its rights. Great skill and diligence has been exercised by those agents, and the Court believes that their efforts were certainly not unreasonable in light of the contrary opinions arrived at by the various jurists to whom the issues have so far been presented. However, the Court feels

that the landowners, within the spirit of the Fifth Amendment of the Constitution of the United States, are entitled to a just compensation for their lands, and that that includes the right to receive as additional compensation the interest granted by the Statute for their loss of the use of their land, or the use of their money, during the long period when the officers of the Government were attempting to diminish the amounts to be paid to them. As already stated, it appears to this Court that these landowners so clearly come within [fol. 77] the class intended by Congress to be benefited by the Statute, that, although the Government's earnest attempts to obtain reversals were in the best of faith, the landowners should not be made to suffer because of those attempts.

Wherefore, the Court directs that in accordance with this opinion drafts of judgments carrying interest on the undeposited deficiencies from the filing of declarations of taking be presented in all of the above styled cases, except the Muschany and Andrews cases in which decrees have already been entered, and that, also, orders ruling the numerous motions and counter-motions be supplied. Upon submission for approval and settlement of the same appropriate orders and decrees will be entered.

GEO. H. MOORE,
United States District Judge.

Dated this 8th day of June, 1945.

[fol. 78] Findings and Judgment

(Filed June 30, 1945.)

In the United States District Court, Eastern District of Missouri, Eastern Division.

United States of America, Plaintiff,
Docket No. 997. vs. At Law.
215.494 Acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., Defendants.

Now on this day, the Court having heretofore heard a motion filed by plaintiff for judgment for plaintiff in condemnation and for defendants fixing the compensation to

be paid by plaintiff to the defendants in the sum of $35,000.00, the price agreed upon in the "option contract" referred to and set out in the answer filed by defendants herein, without interest, and the answer thereto filed by defendants Dennis B. Pitman and May Dell Pitman, wife of said Dennis B. Pitman, and the counter-motion of said last named defendants for judgment with interest, and evidence having been heard, and arguments of counsel having been made, and said motions having been taken under advisement, and the Court being now fully advised in the premises, doth find:

That the United States of America is plaintiff and the following named parties are defendants in this action:

Dennis B. Pitman,
May Dell Pitman, wife of Dennis B. Pitman,
John Paul, Trustee,
John Salfen,
Collector of Revenue of St. Charles County, Missouri,
St. Charles County, Missouri
S. Brooks Remmington, and
The Bank of Dutzow.

That this is a proceeding in condemnation, instituted on the 19th day of June, 1941, by the United States of America to condemn the land hereinafter described, as in such [fol. 79] cases made and provided by the laws of the United States of America, and in which there was filed a Declaration of Taking as provided for by Title 40 United States Code, Section 258a.

That all of the defendants have been duly served with process as required by law, or have duly entered their appearance herein; and that this Court has jurisdiction of the subject-matter of this cause and of all the parties hereto.

That prior to the filing of plaintiff's petition herein and prior to any proceeding in connection therewith, including the filing of said Declaration of Taking, defendants Dennis B. Pitmann and May Dell Pitman, wife of said Dennis B. Pitman, and plaintiff, through the War Department of the United States, entered into a contract in writing, sometimes referred to as an "option contract," a copy whereof was

annexed to and filed with the answer of the last named defendants in this cause, which contract was accepted by plaintiff in accordance with the terms thereof, and has been introduced in evidence in this cause, by the terms of which contract plaintiff agreed to purchase and said last named defendants agreed to sell to plaintiff, for the price and sum of $35,000.00, the said land hereinafter described.

That said defendants Dennis B. Pitman and May Dell Pitman, wife of said Dennis B. Pitman, were at the time of the execution of said option contract, and at the time of filing of said Declaration of Taking, the owners in fee simple of said land hereinafter described.

That, upon the acceptance by plaintiff of said option contract, on or about the 14th day of November, 1940, possession of said land hereinafter described was taken by and has ever since been in plaintiff, the United States of America.

That, since the institution of this proceeding and the filing of said Declaration of Taking, the Supreme Court of the United States has held binding on the parties thereto, insofar as concerns the worth or value of the land at the time of the taking by the United States of America, an option contract for the sale of land, the provisions whereof and the circumstances surrounding the execution [fol. 80] of which, are the same as the option contract aforesaid executed by plaintiff and said defendants, Dennis B. Pitman and May Dell Pitman, wife of said Dennis B. Pitman, except as to dates, the names of the landowners, the description of the property and the sale price; and that, under the aforesaid decision of the Supreme Court of the United States and the provisions of said option contract executed by plaintiff and the last named defendants, the said sum of $35,000.00 was and is, in this proceeding, the agreed value or worth of the land hereinafter described at the time of the taking thereof by plaintiff, and said defendant landowners became and were entitled to have the value or worth of said land fixed in this proceeding at said agreed value, as of the date of the taking thereof.

That on the 19th day of June, 1941, plaintiff caused to be filed in this cause by Henry L. Stimson, Secretary of

War of the United States, the aforesaid Declaration of Taking of the land therein and hereinafter described and on said day caused to be entered in this cause a Judgment of Taking on said Declaration of Taking, whereby the fee simple title to said land became fully vested in the United States of America, plaintiff herein, and the title to and possession of said land was then and has ever since been in the plaintiff, United States of America, and none of the defendants has since had any right, title or interest in or to the same.

That at the time of the filing of said Declaration of Taking, on June 19, 1941, there was deposited by plaintiff in the registry of this Court the sum of $14,600.00 as the then estimated compensation stated in said Declaration of Taking for the appropriation and taking by plaintiff of the fee simple title to the land in said Declaration of Taking and hereinafter described, but that said deposit was erroneous and insufficient in amount in that the same failed to equal said agreed value or worth of said land as of the date of the taking and appropriation thereof by plaintiff. [fol. 81] That on the 23rd day of October, 1942, an order for provisional disbursement was entered herein by virtue whereof the entire amount theretofore paid by plaintiff into the registry of the Court as aforesaid, to-wit, $14,600.00, was disbursed, leaving nothing in the registry of the Court in this cause.

That on the 17th day of May, 1945, there was deposited in the registry of this Court by plaintiff an additional sum of $20,400.00 as additional compensation for the taking and appropriation by plaintiff of the fee simple title to the land in said Declaration of Taking and hereinafter described.

That the combined deposits heretofore made by plaintiff into the registry of this Court in this cause as aforesaid were and are erroneous and insufficient in amount and did not and do not constitute just compensation for the taking of said lands hereinafter described, in that plaintiff, in making said deposit of May 17, 1945, failed to include therein interest on said sum of $20,400.00 which plaintiff had theretofore withheld from the registry of the Court as aforesaid, at the rate of six per cent, per annum

from the time of the filing of said Declaration of Taking, to-wit, the 19th day of June, 1941, until said 17th day of May, 1945, which interest defendant landowners were and are lawfully entitled to receive as a part of the just compensation to which they were and are entitled for the taking and appropriation by plaintiff of the land hereinafter described.

That plaintiff's petition and the proceedings in this cause set forth a cause of action for the condemnation, appropriation and acquisition by plaintiff, by proceedings in condemnation, of the fee simple title to the land hereinafter described, which land was and is necessary to provide for the establishment of an ordnance plant for the national defense of the United States of America and for other military use incidental thereto in connection with the Weldon Springs Ordnance Plant; and that the award-
[fol. 82] ing to plaintiff of a judgment in condemnation, and the awarding to the defendant landowners of full, just compensation for said land, in this condemnation proceeding, will confirm and perfect in plantiff, finally and completely, the fee simple title to the land hereinafter described, in conformity with the laws of the United States of America.

That the land described in plaintiff's petition is the land described in said Declaration of Taking referred to herein, and is bounded, defined and described as follows:

Tract No. 18-A containing 215.494 acres of land, more or less, situate in St. Charles County, Missouri, and more particularly described as follows:

Parcel 1.

A tract of land in Sections 24 and 19, Township 45 North, Ranges 2 East and 3 East, containing 30 acres, more or less, being part of Lot No. 3 as designated and described in the agreed partition of the real estate of James F. Howell, deceased, dated March 29, 1854, and recorded in Book "B" No. 2 pages 450 and following, of Recorder's Office, St. Charles County, Mo., being the remaining portion of said Lot No. 3 after deducting the public road which runs through said Lot No. 3 and 40 acres off the West side thereof conveyed to H. B. Castlio and Mitchell Castlio as

per deeds recorded in Book 45, page 209 and Book 38, page 108, and 50 acres conveyed to Boyd Keitel by Dennis B. Pitman as per deed recorded in Book 179, Page 65, said 30 acre tract being more particularly described as follows: Beginning at the northeastern most corner of said Lot No. 3, a point; thence South 7½ degrees West 16.80 chains; thence North 82½ degrees West 18.00 chains; thence North 7½ degrees East 16.80 chains; thence South 82½ degrees East 18.00 chains to the point of beginning, said land being situated in St. Charles County, Missouri, and containing 30.0 acres, more or less.

Parcel 2.

All of the fractional NE¼ of Section 36, Township 46 North, Range 2 East, lying West of the West line of U. S. Survey 1798, excepting therefrom a tract of land containing 11.58 acres in the Northwest corner thereof described as beginning at the Northwest corner of the NE¼ of said Section 36, thence East 10.94 chains; thence South 10.36 chains; thence West 10.94 chains; thence North 10.36 chains to the point of beginning; said tract containing 73.03 acres, more or less.

Parcel 3.

Also part of U. S. Survey No. 1798, in Township 46, North, Range 2 and 3 East, bounded and more particularly described as follows: Beginning at a rock in the West line of said Survey 1798, which is South 7½ degrees West 35.00 chains from the Northwest corner of said Survey, thence South 82½ degrees East 19.05 chains to corner, a rock, thence South 7½ degrees West 17.41 ⅔ chains to corner a rock; thence North 82½ degrees West 19.05 chains to point on West line of Survey 1798, thence along said West line of Survey 1798 North 7½ degrees East 17.50 chains to place of beginning, containing 33⅓ acres, more or less.

[fol. 83] Parcel 4.

A tract of land located in the Keitel tract of Lot No. 3 between the Francis Howell Cemetery and the Pitman road in U. S. Survey No. 887, being more particularly described as follows: Beginning at the Southeast corner of the Francis Howell Cemetery; thence East 75 feet to the West line of the Pitman road; thence North along said

line a distance of 84 feet to a point; thence West 75 feet to the East line of said Cemetery; thence South along said line 84 feet to the point of beginning, said land being located in St. Charles County, Missouri, and containing .144 acres, more or less.

Parcel 5.

A tract of land containing 9.67 acres, being part of the W½ of the NW¼ of Section 6, Township 45 North, Range 3 East, more particularly described as follows to-wit: Beginning in the South line of the Marthasville Road at a rock in the Township line, which rock is distant East 4.38 Chains from another rock in the South line of said road set in the Range line, at or near, the Northwest corner of said Section 6, Township 45 North, Range 3 East; thence from said beginning point South 3 degrees 30 minutes East along the land once of J. L. Schenningmann 40.82 chains to the East and West middle line of Section 6, an old stone in said line, from which a Black Walnut bears North 33¼, West 32 links and a Hickory 8 inches in diameter bears South 89, East 39 links; thence with said line of said Section West 2.37½ chains to a stake; thence North 3 degrees 30 minutes West parallel with the first course along the land once of Edw. Berghaus 40.82 chains to a stake in the South line of the Marthasville road; thence East with the south line of said road 2.37½ Chains to the point of beginning, containing 9.67 acres.

Parcel 6.

Part of the Southwest fractional quarter of Section 27, Township 46 North, Range 2 East, bounded and more particularly described as follows: Beginning at the southwest corner of said Section 27, a rock, from which a black oak 16 inches in diameter bears South 54 degrees West distant 29 links and a white oak 8 inches in diameter bears North 85 degrees West distant 25 links; thence North along the West line of said section 17 chains 90 links to corner, a rock, from which a black oak 12 inches in diameter bears North 30 degrees East distant 17 links and a white oak 4 inches in diameter bears South 13 degrees East distant 22 links; thence South 40¾ degrees East

along the land once of Hy Boerding 24 chains 9 links to corner, a rock, on the section line between Sections 27 and 34 of said township and range; thence West 16 chains to the place of beginning, containing 14.32 acres, more or less, and being the same tract of land conveyed by John W. Callison and wife to Nancy E. Callison as per Warranty Deed dated August 3, 1926, and recorded in the Recorder's Office in Book 154 at Page 332.

Parcel 7.

A tract of land situated in U. S. Survey No. 1641, Township 46 North, Range 2 East, described as follows: Beginning at a point in the center of Dardenne Creek distant North 80 degrees 09 minutes East 13.40 chains and North 9 degrees 14 minutes West 21.37 chains from the most northeasterly corner of U. S. Survey No. 280; thence along the land once of Julia Castlio South 9 degrees 14 minutes East 21.37 chains to a stone in the southern line of said U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280; thence along the [fol. 84] southern line of said U. S. Survey No. 1641 North 80 degrees 09 minutes East 21.73 chains to an old stone; thence North 9 degrees 00 minutes West along the land once of Schneider 5.75 chains to a point in the center line of Dardenne Creek; thence northwestwardly along the center line of Dardenne Creek, as now located, to the place of beginning, containing 35 acres, more or less.

A tract of land situated in fractional Section 24, Township 46 North, Range 2 East, described as follows: Beginning at a stone, in the Southern Line of U. S. Survey No. 1641, which stone is distant 13.40 chains North 80 degrees 09 minutes East from the northeastern corner of U. S. Survey No. 280 and from which stone a Black Walnut 30 inches bears North 9 degrees 00 minutes West 51½ links; thence South 9 degrees 14 minutes East along the land once of O. W. Fosher 10.80 chains to an iron rod; thence North 80 degrees 09 minutes East along the land once of O. W. Fosher 17.62 chains to the center line of the former Pitman private road, 16 feet wide; thence North 0 degrees 19 minutes East 11.18 chains to a stone in the southern line of U. S. Survey No. 1641; thence along

said Survey line South 80 degrees 09 minutes West 19.44 chains to the place of beginning, containing 20 acres.

All of the above described land being situated in St. Charles County, Missouri, and containing in all 215.494 acres, more or less.

Subject to all existing highway and public utility easements, but including the fee underlying such existing easements.

That plaintiff's said motion for judgment should be sustained in part, but should be denied insofar as plaintiff thereby seeks to prevent said defendant landowners from receiving any interest as a part of the full, just compensation to be allowed them for the taking and appropriation of said land.

That defendant landowners' said counter-motion for judgment fixing the compensation to be paid by plaintiff for the taking of said land at $35,000.00 plus interest at six per cent. per annum on said sum of $20,400.00 from June 19, 1941, until the payment thereof into the registry of the Court should be sustained.

Now, Therefore, in accordance with the above findings, it is Ordered, Adjudged and Decreed that:

(1) Plaintiff, United States of America, by virtue of this proceeding, is awarded judgment in condemnation against the said premises in plaintiff's petition and hereinabove described, for the purposes herein defined and specified, and against the defendants herein, and each and all of them, jointly and severally, as their title and rights may appear, and that the title in fee simple to said premises, subject to all existing highway and public utility ease- [fol. 85] ments, but including the fee underlying such existing easements, is vested in the plaintiff, United States of America, and has been vested in plaintiff, the United States of America, upon and since the filing of said Declaration of Taking, and the defendants, and each and all of them, jointly and severally, are divested of any and all right, title, interest and claim, of every nature and description, in or to the land above described.

(2) That in accordance with the option contract executed by plaintiff, United States of America, and said defendant landowners, and accepted by plaintiff, the defendant landowners are entitled to and there is awarded to them the sum of $35,000.00 as and for the agreed value or worth of said land, as of the date of the filing of said Declaration of Taking herein, together with interest on $20,400.00 of said sum, at the rate of six per cent. per annum, from the 19th day of June, 1941, until the 17th day of May, 1945, which said sum of $35,000.00 and said interest constitute the full, just compensation to which defendant landowners, and any and all other persons who may be found entitled thereto claiming by, through or under them, are entitled in this cause for said land.

(3) That plaintiff shall forthwith pay into the registry of this Court the sum of $4787.20, being the equivalent of six per cent. interest on said sum of $20,400.00 from the 19th day of June, 1941, to the 17th day of May, 1945, as that part of the just compensation to which defendant landowners are entitled for the taking and appropriation by plaintiff of said land hereinabove described and which has not been heretofore deposited in the regisistry of this Court by plaintiff, which sum of $4787.20, together with said sum of $20,400.00 deposited by plaintiff in the registry of the Court on said 17th day of May, 1945, shall repose in the registry of this Court for the use and benefit of said defendant landowners, and other [fol. 85A] defendants claiming an interest therein by and through said defendant landowners, and for disposition in the way, manner and proportion as this Court shall hereafter order, adjudge and decree.

(4) That this cause shall be held open for entry of such other and further orders and decrees as may be meet and just in the premises.

Dated this 30th day of June, 1945.

GEO. H. MOORE,
District Judge.

[fol. 86] (Motion of Plaintiff for New Trial.)

(Filed July 7, 1945.)

Now comes the plaintiff, the United States of America, by its attorneys, and moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial for the following reasons:

1. The Court erred in holding that this is an adversary condemnation proceeding;

2. The Court erred in not holding that this is a friendly condemnation proceeding according to the terms and provisions of the option-contract;

3. The Court erred in not holding that the filing of the equitable answer by the property owners converted this condemnation proceeding into an equitable action for the enforcement of the option-contract;

4. The Court erred in holding that this condemnation proceeding differs in no respect from any other condemnation proceeding except in the method of ascertaining the value of the land;

5. The Court erred in not holding that the equitable answer filed by the property owners in this case and the decision of the Supreme Court of the United States upholding the validity of the option-contract and the allegations of the equitable answer took the case out of the operation of the Declaration of Taking part of this condemnation proceeding;

[fol. 87] 6. The Court erred in holding that there was an ascertainment of the value of the land in this proceeding, for it has never been ascertained by this Court nor by any Appellate Court;

7. The Court erred in not holding that the compensation was not ascertained in this proceeding but that on the contrary it was fixed by the option-contract and the opinion of the Supreme Court of the United States holding such option-contract to be valid and binding upon the plaintiff;

8. The Court erred in its construction of the option-contract;

9. The Court erred in holding that the amount mentioned in the option-contract was the fair market value of the land involved in this case at the time of the filing of the Declaration of Taking in this case;

10. The Court erred in not holding that the sum mentioned in the option-contract is the full compensation to which the property owners are entitled in this proceeding;

11. The Court erred in its definition as to what constitutes just compensation;

12. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty to be paid by the plaintiff for its failure to perform the conditions of the option-contract immediately after its acceptance by the Government;

13. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty against the Government for litigating the validity of the option-contract;

14. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty for the Government's delay in the payment of the amount mentioned in the option-contract when such delay was caused by the vigilance and diligence of plaintiff's Officers and Attorneys in litigating the validity of the option-contract, and with the acquiescence of the defendant property owners;

[fol. 88] 15. The Court erred in adding interest to the amount mentioned in the option-contract as a penalty without citing some statute authorizing such penalty;

16. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to promptly perform and fulfill the provisions and conditions of the option-contract;

17. The Court erred in adding interest to the amount mentioned in the option-contract as liquidated damages to the property owners for the failure of the Government to fully and completely perform and fulfill the provisions and conditions of the option-contract;

18. The Court erred in its construction of the opinion of the Supreme Court of the United States in the Andrews and Muschany cases;

19. The Court erred in not holding that the Supreme Court of the United States held that the amount mentioned in the option-contract was full and complete compensation when the Supreme Court said:

"The offer was to sell to the Government at a fixed, definite price. The Government when it accepted this offer, agreed to pay this set amount and no more. The contract contains no provision allowing adjustment of price based on possible future indeterminate expenses . . . The Government knew the total cost when it became bound on the contract." (emphasis added)

20. The Court erred in holding that the burden of proof is upon the Government to show the absence of any contract obligation to pay interest or any statute providing for interest;

21. The Court erred in not holding that the burden of proof is upon the property owners to point out the exact provision of the contract providing for interest or to point out the exact provision of the statute providing for interest and a full compliance by the property owners with such statute;

[fol. 89] 22. The Court erred in allowing interest upon any part of the amount mentioned in the option-contract and for any period of time;

23. The decision of the judgment now entered is contrary to the views of the Court when the question of the option was first presented to the Court in the Muschany and Andrews cases when the District Courts held in the Findings of Fact and Conclusions of Law that the property owners were entitled to recover only the principal amount named in the option without interest;

24. That as the Supreme Court, the Court of Appeals and the District Court all held in passing on the McDowell option that the amount included therein included not only the value of the land but compensation to the title company,

compensation to McDowell by way of commission, and other expenses, to now allow interest on the entire sum to the property owners would be to allow him interest on not only the value of his land but also on other items which do not belong to him, but which, in truth and fact, are being paid by the Government and not by the property owners to the title company and to McDowell;

25. That by including all of these elements in the amount named in the option, as well as the value of the land, the parties conclusively show that they were considering the amount of the option to be the total and entire amount to be paid by the Government as full compensation for the land and the other elements named therein, and further show that it was the intention of the parties that the amount and no additions thereto by way of interest was to be paid by the Government;

26. That the Court erred in holding that the amount named in the option represented the value of the land in view of the holding of the Supreme Court that it did not represent that amount at all, but that it represened the agreed purchase price, and in view of the fact that the option contract itself repeatedly refers to it as the agreed pur-[fol. 90] chase price and not value;

27. That the position of the land owners in asking for interest under the Declaration of Taking Statute is inconsistent with their prior position heretofore asserted that they were entitled to have the option contract enforced as an option contract and that said contract not calling for interest, having failed to provide for the payment of interest, does not now entitle the landowners to interest in addition to the principal amount named therein;

28. The Court erred in finding that, upon the acceptance by the plaintiff of the said option-contract the possession of the land involved herein was taken by, and has ever since been in the plaintiff, the United States of America, because there was no evidence to sustain the said finding of fact;

29. The Court erred in not holding that the right to immediate possession of the land was included in the consideration mentioned in the option-contract and that such right of immediate possession was contracted for in the said

option-contract and that the payment of the consideration mentioned in the option-contract is full payment for the land herein involved and for the right to immediate possession thereof obtained by the plaintiff under such option-contract;

30. The Court erred in holding that there was a taking under the Declaration of Taking filed in this cause such as contemplated by the Declaration of Taking Statute because the right to possession of the property had theretofore been contracted for under the terms and provisions of the option-contract;

31. The Court erred in holding that the property owners are entitled to interest under the provisions of the Declaration of Taking Statute because there was no taking under the Declaration of Taking which could authorize the allowance of interest under such statute;

[fol. 91] 32. The Court erred in holding that there was an ascertainment of just compensation in this proceeding, such as is mentioned and contemplated in the Declaration of Taking Statute, in order to warrant the inclusion, as part of the just compensation awarded, of interest at the rate of 6% per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment, or upon such part of the amount finally awarded as was not deposited contemporaneously with the Declaration of Taking;

33. The Court erred in holding that the two deposits made in this case, the first with the Declaration of Taking and the second on May 17, 1945 were erroneous and insufficient in that they failed to include any interest;

34. The Court erred in its judgment and decree entered in this cause by adding interest at the rate of 6% per annum upon the deficiency or upon the difference between the amount deposited with the Declaration of Taking and the amount mentioned in the option-contract;

35. The Court erred in its judgment and decree entered in this cause by including interest at the rate of 6% per annum from the date of the Declaration of Taking in this cause to May 17, 1945 upon the amount deposited in the Registry of this Court on the said 17th day of May, 1945;

36. The Court erred in its judgment and decree entered in this cause by requiring the plaintiff to pay into the Registry of the Court forthwith a sum of money equivalent to 6% interest on the sum deposited in the Registry of this Court on May 17, 1945 from the date of the Declaration of Taking in this case to the date of said deposit on May 17, 1945 as a part of the just compensation to which the defendants are entitled for the taking of the lands involved in this cause;

[fol. 92] 37. The Court erred in its findings and in its judgment and decree in the computation of the amount of the interest adjudged to the defendants upon the deficiency from the date of the Declaration of Taking to May 17, 1945;

38. The Findings and Judgment entered in this cause are contrary to and against the evidence under the law, are contrary to and against the law under the evidence and are contrary to and against the law and the evidence;

Wherefore, Plaintiff moves the Court to set aside its Findings and Judgment entered in this cause and to grant plaintiff a new trial herein.

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

M. WALKER COOPER,
Special Assistant, United States Attorney.

Dated this 7th day of July, 1945.

[fol. 92a] (Docket Entry of Submission and Overruling of Motion of Plaintiff for New Trial.)

November 21, 1945.

Motion of plaintiff for a new trial submitted by plaintiff, taken as submitted by defendants and overruled.

[fol. 93] Statement Of Points To Be Relied Upon On Appeal

(Filed December 7, 1945.)

In The United States District Court, Eastern District Of Missouri, Eastern Division.

United States Of America, Plaintiff,
Docket No. 997. vs. At Law.
215.494 Acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., Defendants.

The United States of America, appellant in the above entitled case, states that the following points will be relied upon on the appeal:

1. The District Court erred in denying the plaintiff's motion for judgment fixing compensation in the amount of the option contract price, without interest.

2. The District Court erred in entering judgment with interest on $20,400.00, the difference between $35,000.00, the amount of the option contract price, and $14,600.00, the sum deposited with the Declaration of Taking, from June 19, 1941, the date of the filing of the Declaration of Taking, to May 17, 1945, the date of the deposit in court of such difference.

3. The District Court erred in overruling plaintiff's motion for a new trial.

Respectfully submitted,

HARRY C. BLANTON

Copy of the foregoing Statement mailed to opposing counsel, Mr. William H. Allen, 112 N. Fourth Street, St. Louis 2, Missouri, this 7th day of December, 1945.

HARRY C. BLANTON

[fol. 94] Designation of the Record on Appeal.

(Filed December 7, 1945.)

United States of America, Appellant in the above entitled cause, designates for inclusion in the Transcript of

the Record on Appeal the pleadings, proceedings and evidence as follows:

	Filed
(1) Petition in condemnation as amended by order of the Court on September 6, 1941 and as further amended on October 20, 1941	June 19, 1941
(2) Declaration of Taking in Cause No. 979, omitting therefrom all names from the caption excepting the defendants Dennis B. Pitman and May Dell Pitman, his wife and omitting from the paragraph describing the parcels of land in said Declaration all Parcels except Tract No. 18-A	June 16, 1941
(3) Order and Judgment vesting title in Plaintiff as to Tract No. 18-A and Order of Immediate Possession	June 19, 1941
(4) Order directing the transfer of the sum of $14,600.00 from Cause No. 979 to this cause for the use and benefit of the defendants in this cause	June 19, 1941
(5) Answer of defendants Dennis B. Pitman and May Dell Pitman to Plaintiff's petition	September 3, 1941
(6) Motion of Plaintiff for judgment in condemnation and for judgment for defendants fixing compensation by option-contract	April 17, 1945

[fol. 95]

(7) Order setting for hearing on May 7, 1945 Plaintiff's Motion for Judgment in condemnation	April 17, 1945

(8) Answer of defendants Dennis B. Pitman, et al., to Plaintiff's Motion for Judgment in Condemnation fixing compensation by the option-contract and counter motion of said defendants for Judgment with interest	May 4, 1945
(9) Receipt of the Clerk for $20,400.00 paid into the Registry of the Court	May 17, 1945
(10) Memorandum of Opinion of the Court finding issues in favor of defendants and against the Plaintiff	June 8, 1945
(11) Findings and Judgment	June 30, 1945
(12) Plaintiff's Motion for New Trial	July 7, 1945
(13) Docket entry of November 21, 1945 overruling Plaintiff's Motion for New Trial	
(14) Plaintiff's Notice of Appeal	November 23, 1945
(15) Appellant's Statement of Points	
(16) Clerk's docket entries	
(17) This Designation of the Record	
(18) All other pleadings and documents filed in connection with this appeal.	

HARRY C. BLANTON,
United States Attorney.

RUSSELL VANDIVORT,
Assistant United States Attorney.

M. WALKER COOPER,
Special Assistant United States Attorney.

Copy of the foregoing Designation of the Record on Appeal mailed to opposing counsel, Mr. William H. Allen, 112 N. Fourth Street, St. Louis 2, Missouri, this 7th day of December, 1945.

HARRY C. BLANTON.

[fol. 96] Clerk's Certificate.

United States of America,
Eastern Division of the
Eastern Judicial District
of Missouri.—ss.:

I, James J. O'Connor, Clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing to be a full, true and complete transcript (except in so far as the same is restricted by the designation of the record on appeal heretofore set out) of the record and proceedings in case No. 997, wherein the United States of America is plaintiff-appellant and 215.494 acres of land, more or less, situate in St. Charles County, State of Missouri, Known as Tract No. 18-A, and Dennis B. Pitman, et al., are defendants-appellants, as fully as the same remains on file and of record in my office.

Seal
U. S. Dist. Court
East. Div. of the
East. Jud. Dist. of
Missouri

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court at office in the City of St. Louis, State of Missouri, in said Division of said District this 21st day of December, in the year of our Lord, Nineteen Hundred and Forty-five.

JAMES J. O'CONNOR,
Clerk, U. S. District Court.
By John J. Jarvis,
Deputy Clerk.

Filed Dec. 21, 1945. E. E. Koch, Clerk.

[fol. 97] Motion of the United States of America to Consolidate Appeals for Printing the Record, Filing Briefs, Hearing and Decision.

In the United States Circuit Court of Appeals for the Eighth Circuit.

Nos. 13223, 13,226, 13227, and 13228.

United States Of America, Appellant,

vs.

Q. W. S. S. Realty And Investment Company, A Corporation, Et Al., Appellees.

United States of America, Appellant,

vs.

Edgar S. Albrecht, et al., Appellees.

United States of America, Appellant.

vs.

Edward J. Linnenbringer, et al., Appellees.

United States of America, Appellant,

vs.

Dennis B. Pitman, et al., Appellees.

[fol. 98] The United States of America, appellant, moves that the appeals taken by the United States from the judgments entered in the above-entitled causes be consolidated for the purpose of printing the record, filing briefs, hearing and decision and that the United States be permitted to file a single consolidated brief as appellant from the judgments in the several causes.

This motion is made for the following reasons:

The above causes arise out of proceedings to condemn certain lands in St. Charles County, Missouri, for the Weldon Spring Ordnance plant. The question present in each case concerns the allowance in a condemnation judgment of interest on the difference between the sum deposited with a Declaration of Taking and the price agreed to be paid by the United States in a contract to purchase the land condemned from the date of the filing of the Declaration of Taking to the date of the deposit of such difference in court. The same question thus being presented in all

of the cases, it is desirable that the United States deal with it in a single brief and that the cases be argued and considered together to avoid repetition.

Respectfully submitted,

J. EDWARD WILLIAMS,
Acting Head, Lands Division.

HARRY C. BLANTON,
United States Attorney,
St. Louis, Missouri.

Agreed to:
Samuel M. Watson,
Attorney for Defendant,
4254 Olive St.,
St. Louis, Mo.

George Eigel,
Atty. for Albert W.
Albrecht & Virginia Albrecht.

R. C. Coburn,
Atty. for Edgar S. Albrecht and
Geraldine Albrecht.

Wm. Wayne, Jr.,
Wm. R. Gilbert,
208 North Broadway, St. Louis 1, Mo.
Attorneys for Edward J. Linnenbringer.

[fol. 99] Wm. H. Allen,
Attorney for Landowners in No. 997.

(Endorsed): Nos. 13,223, 13,226, 13,227 and 13,228. Motion Appellant that causes be consolidated for purpose of printing record, filing briefs, etc., and Consents by Appellees. Filed in U. S. Circuit Court of Appeals on December 26, 1945.

[fol. 289] And thereafter the following proceedings were had in said causes in the Circuit Court of Appeals, viz.:

(Appearance of Counsel for Appellant in Cause No. 13,223.)

United States Circuit Court of Appeals

Eighth Circuit

United States of America, Appellant,
No. 13,223. vs.
Edgar S. Albrecht, et al.

The Clerk will enter my appearance as Counsel for the Appellant.

J. EDW. WILLIAMS,
Washington, D. C.

HARRY C. BLANTON,
St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 14, 1945.

(Appearance of Mr. Richmond C. Coburn as Counsel for Appellees Edgar S. Albrecht and Geraldine Albrecht in Cause No. 13,223.)

The Clerk will enter my appearance as Counsel for the Appellees Edgar S. Albrecht and Geraldine Albrecht.

IGOE, CARROLL, KEEFE
AND COBURN

and

RICHMOND C. COBURN
1530 Boatmen's Bank Bldg.
St. Louis 2, Mo.

[fol. 290] (Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 15, 1945.

(Appearance of Mr. George Eigel as Counsel for Appellees Albert W. Albrecht, Jr., and Virginia Albrecht in Cause No. 13,223.)

The Clerk will enter my appearance as Counsel for the Appellees Albert W. Albrecht, Jr., and Virginia Albrecht.

GEORGE EIGEL.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 19, 1945.

(Appearance of Counsel for Appellant in Cause No. 13,226.)

United States Circuit Court of Appeals

Eighth Circuit

United States of America, Appellant,
No. 13,226. vs.
Q. W. S. S. Realty and Investment Company.

The Clerk will enter my appearance as Counsel for the Appellant.

J. EDWARD WILLIAMS
Dept. of Justice
HARRY C. BLANTON
RUSSELL VANDIVORT

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 26, 1945.

[fol. 291] (Appearance of Counsel for Appellee in Cause No. 13,226.)

The Clerk will enter my appearance as Counsel for the Appellee.

SAMUEL M. WATSON.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jan. 15, 1946.

(Appearance of Counsel for Appellant in Cause No. 13,227.)

United States Circuit Court of Appeals

Eighth Circuit

United States of America, Appellant,
No. 13,227. vs.
Edward J. Linnenbringer and Emma Linnenbringer, wife of Edward J. Linnenbringer.

The Clerk will enter my appearance as Counsel for the Appellant.

J. EDWARD WILLIAMS
Dept. of Justice
HARRY C. BLANTON
RUSSELL VANDIVORT

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 26, 1945.

[fol. 292] (Appearance of Counsel for Appellee Edw. J. Linnenbringer in Cause No. 13,227.)

The Clerk will enter my appearance as Counsel for the Appellee Edw. J. Linnenbringer.

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(Endorsed): Filed in U. S. Circuit Court of Appeals, Mar. 15, 1946.

(Appearance of Counsel for Appellant in Cause No. 13,228.)

United States Circuit Court of Appeals

Eighth Circuit

United States of America, Appellant,
No. 13,228. vs.
Dennis B. Pitman and May Dell Pitman, wife of Dennis B. Pitman.

The Clerk will enter my appearance as Counsel for the Appellant.

J. EDWARD WILLIAMS
HARRY C. BLANTON
RUSSELL VANDIVORT

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 26, 1945.

[fol. 293] (Appearance of Counsel for Appellees in Cause No. 13,228.)

The Clerk will enter my appearance as Counsel for the Appellees.

WM. H. ALLEN.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Dec. 24, 1945.

(Order of Submission in Causes Nos. 13,223, 13,226, 13,227 and 13,228.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Friday, March 8, 1946.

United States of America, Appellant,
No. 13,223. vs.
Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht.

Appeal from the District Court of the United States for the Eastern District of Missouri.

United States of America, Appellant,
No. 13,226. vs.
Q. W. S. S. Realty and Investment Company.

Appeal from the District Court of the United States for the Eastern District of Missouri.

United States of America, Appellant,
No. 13,227. vs.
Edward J. Linnenbringer and Emma Linnenbringer, wife of Edward J. Linnenbringer.

Appeal from the District Court of the United States for the Eastern District of Missouri.

and

[fol. 294] United States of America, Appellant,
No. 13,228. vs.
Dennis B. Pitman and May Dell Pitman, wife of Dennis B. Pitman.

Appeal from the District Court of the United States for the Eastern District of Missouri.

These causes, Nos. 13,223, 13,226, 13,227 and 13,228, having been called for hearing in their regular order are argued together, and argument was commenced by Mr. Harry C. Blanton, United States Attorney, for the United States of America, continued by Mr. Samuel M. Watson, for appellee in No. 13,226, Q. W. S. S. Realty and Investment Company, and by Mr. William H. Allen for the appellees in No. 13,228, Dennis B. Pitman, et al., and concluded by Mr. Harry C. Blanton, United States Attorney, for the United States of America, counsel for the appellees in No. 13,223, Edgar S. Albrecht, et al., and for the appellees in No. 13,227, Edward J. Linnenbringer, et al., not appearing to present oral arguments. These causes are thereupon taken by the Court as submitted on the transcripts of the records from said District Court and the briefs of counsel filed herein.

[fol. 295] Opinion in Causes Nos. 13,223, 13,226, 13,227 and 13,228.)

United States Circuit Court of Appeals

Eighth Circuit.

No. 13,223.

United States of America, Appellant, vs. Edgar S. Albrecht, et al., Appellees.	Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 13,226.

United States of America, Appellant, vs. Q. W. S. S. Realty and Investment Company, a Corporation, Appellee.	Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 13,227.

United States of America, Appellant, vs. Edward J. Linnenbringer, et al., Appellees.	Appeal from the District Court of the United States for the Eastern District of Missouri.

No. 13,228.

United States of America, Appellant, vs. Dennis B. Pitman, et al., Appellees. } Appeal from the District Court of the United States for the Eastern District of Missouri.

[April 9, 1946.]

Mr. Harry C. Blanton, United States Attorney (Mr. J. Edward Williams, Acting Head, Lands Division; Mr. S. Russell Vandivort, Assistant United States Attorney; and Mr. Roger P. Marquis and Miss Wilma C. Martin, Attorneys, Department of Justice, were with him on the brief), for Appellant.

Mr. George Eigel and Messrs. Igoe, Carroll, Keefe & Coburn submitted brief for Edgar S. Albrecht, et al.

Mr. Samuel M. Watson for appellee, Q. W. S. S. Realty & Investment Company.

Messrs. William Waye, Jr., Roscoe Anderson and William R. Gilbert submitted brief for Edward J. Linnenbringer, et al.

Mr. William H. Allen for appellees, Dennis B. Pitman, et al.

Before SANBORN, THOMAS, and RIDDICK, Circuit Judges.

RIDDICK, Circuit Judge, delivered the opinion of the Court.

These cases are companion cases to No. 13,174, Oliver, et al. v. United States, decided this day. They present,

on facts identical so far as material, the question decided in the Oliver case. In these cases, however, the judgment of the District Court was in favor of the appellee landowners. Since the decision here is ruled by the Oliver case, the judgment in each of the cases is reversed, and each case is remanded to the District Court with directions to enter judgment in favor of the appellees for the consideration stipulated in the contract between appellees and the United States without interest.

[fol. 298] (Opinion in Cause No. 13,174.)

United States Circuit Court of Appeals

Eighth Circuit.

No. 13,174.

Lola Castlio Oliver and A. Ray Oliver, her Husband, and Mrs. B. I. Castlio, (also known as B. Irene Castlio),
Appellants,
vs.
United States of America,
Appellee.

Appeal from the District Court of the United States for the Eastern District of Missouri.

[April 9, 1946.]

Mr. Richmond C. Coburn (Messrs. Igoe, Carroll, Keefe & Coburn and Mr. Robert V. Niedner were with him on the brief) for Appellants.

Mr. Harry C. Blanton, United States Attorney (Mr. J. Edward Williams, Acting Head, Lands Division; Mr.

M. Walker Cooper, Special Assistant to the United States Attorney; Mr. S. Russell Vandivort, Assistant United States Attorney; and Mr. Roger P. Marquis and Miss Wilma C. Martin, Attorneys, Department of Justice, were with him on the brief), for Appellee.

Before SANBORN, THOMAS, and RIDDICK, Circuit Judges.

RIDDICK, Circuit Judge, delivered the opinion of the Court.

This is one of the numerous controversies growing out of the acquisition by the United States of a large tract of land near Weldon Springs in St. Charles County, Missouri, to be used as a location for a Government ordnance plant. The efforts of the War Department to purchase the land in the area selected for the ordnance plant, its acceptance of approximately 270 contracts from owners to convey their tracts to the United States for stipulated sums, and its unsuccessful attempt to repudiate all of the contracts of purchase which had not been fully executed on the conclusion that the contracts violated the statutory prohibition of a cost-plus-a-percentage-of-cost system of contracting in section 1 of the National Defense Act of July 2, 1940, 54 Stat. 712, 50 U.S.C.A., Appendix, § 1171, are detailed in the opinion of the District Court for the Eastern District of Missouri in *United States* v. *Certain Land Situate in St. Charles County, Missouri*, 46 F.Supp. 921; and in the opinions of this court in *United States* v. *Muschany*, 139 F.2d 661, and of the Supreme Court in *Muschany* v. *United States*, 324 U.S. 49.

This case involves one of the purchase contracts. Since the decision of the Supreme Court in *Muschany* v. *United States, supra*, the validity of contract is established. The sole question on this appeal is whether the owners of the land are entitled to recover interest in addition to the

price stipulated in the purchase contract in a proceeding instituted by the United States, following its attempted repudiation of the contract, to acquire the land by condemnation. The contract was executed by the appellant landowners on the 24th day of December, 1940, and accepted on behalf of the United States by the authorized agent of the War Department on the following 28th day of December. The contract is entitled "Option to Purchase Land." It recites that for the consideration of $1.00 paid by the United States the owners agree to sell and convey to the United States for a consideration of $70,000 the land, together with the right of immediate occupancy and use of the land for any purpose whatsoever from and after acceptance by the United States of the purchase contract until such land is conveyed to the United States by the owners and title approved by the Attorney General of the United States and the agreed purchase price paid by the United States to the owners. The landowners agree to furnish the Government a good and merchantable title to the land, free of all liens and encumbrances, and further that the Government may acquire the land by condemnation in the event the title offered by the landowners is not approved by the Attorney General. The paragraph with reference to condemnation is as follows:

"If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings."

After taking possession under the contract and following the conclusion that the purchase contract was void,

the United States on June 6, 1941, instituted proceedings for condemnation of the land. On that date the United States filed its declaration of taking and deposited in the registry of the court $21,500 as estimated just compensation. On the same day an order was entered vesting title in the United States. The landowners filed an answer, setting up the purchase contract, insisting upon its validity, and requesting the court to fix the award for the land at the sum stipulated in the contract with interest at six per cent per annum from the date of the acceptance of the contract by the Government. Perhaps because the parties were awaiting final decision in the Muschany case as to the validity of the purchase contract there brought in question, which was identical with the contract involved in the present case so far as material to the question here, nothing more was done until after the decision of the Supreme Court in that case came down on February 5, 1945. On April 6, 1945, the United States filed a motion in the condemnation proceedings, reciting that the validity of the purchase contract had been sustained by the Supreme Court in the Muschany case, and asking an order of the District Court directing the United States to pay into the registry of the court the difference between the sum of $21,500 theretofore deposited as estimated compensation and the price stipulated in the purchase contract and for judgment in condemnation in accordance with the contract. To this motion the landowners filed a response, consenting to judgment in condemnation in favor of the United States for the price stipulated in the purchase contract, plus interest thereon from the date of acceptance of the contract by the Government until the deposit of the estimated compensation made with the declaration of taking in the condemnation proceedings on June 6, 1941, and with interest at six per cent thereafter on the difference ($48,500) between the amount deposited with the declaration of taking and

the price stipulated in the purchase contract. On May 14, 1945, the trial court entered a judgment sustaining the motion of the United States and denying interest. The landowners appeal.

The right of an owner to just compensation for his land taken by the United States is guaranteed by the Constitution. Just compensation is the fair value of the land paid contemporaneously with its taking. Where the taking precedes the payment of fair value, the owner is deprived of the use of the land or of the use of its equivalent in money for the time between the taking and payment. In such cases, in order that the owner shall not suffer loss and shall receive the just compensation guaranteed him by the Constitution, he is entitled to interest upon the fair value of the land from the date of the taking until payment. *United States* v. *Rogers*, 255 U.S. 163, 169; *Seaboard Air Line Ry. Co.* v. *United States*, 261 U.S. 299, 305-306. This constitutional right of the owner whose property is taken is recognized in the Act under which the condemnation in this case proceeded. The statutory provision is that just compensation "shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court." 40 U.S.C.A., § 258a.

Contracts between the Government and a landowner made in contemplation of acquisition of land by condemnation, fixing the value of the land for that purpose, are valid. *Danforth* v. *United States*, 308 U.S. 271, 282; *Bank of Edenton* v. *United States*, 4 Cir., 152 F.2d 251, 254. Plainly, where after such a contract the United States acquires possession of the land in the contemplated condem-

nation proceedings and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of taking until payment in order that the constitutional requirement of just compensation may be satisfied. Conversely, where the payment of the agreed value and the taking in the condemnation proceedings are contemporaneous, interest is not allowable. Nothing more is held in the Danforth case. It must also be true that where, as in the present case, the agency of the Government acquiring the land for the United States is authorized to acquire it by purchase, contracts made by it on behalf of the United States with the landowners may validly fix the net amount to be received by the landowner from the United States for the taking of the land either by purchase or by condemnation. In such a contract the parties may bind themselves to a consideration which may be either greater or less than just compensation in the constitutional sense. That this was the effect of the contract in question here we have no doubt. By it, the United States acquired the possession and the use of the land until title vested in it by the payment of the stipulated purchase price. See *Muschany* v. *United States, supra,* p. 62.

In the present case the United States having repudiated its purchase contract, the landowners could have accepted this repudiation and in the condemnation proceedings recovered, as a part of just compensation, interest at the statutory rate upon the amount awarded them in excess of the amount paid into the registry of the court at the time of the declaration of taking. They were, however, within their rights in insisting upon the validity of the purchase contract and upon its controlling effect upon the question of the compensation to be received by them, as they did throughout these proceedings. Having taken this position, their right to recover interest upon the sum stipulated in the purchase contract depends upon the in-

terpretation of that contract which, of course, must be considered in its entirety. The landowners are not entitled to insist upon provisions of the contract favorable to them while rejecting others which are unfavorable.

There is no provision in the contract for the payment of interest on the stipulated consideration, nor does the contract fix a time within which payment is required. Delay in the payment of the agreed compensation for the time necessary to clear title by condemnation or otherwise is clearly implied. The purchase price stipulated in the contract is not merely the agreed fair value of the land made in contemplation of its acquisition by the United States through condemnation, but the agreed consideration to be paid the landowners by the United States for both the land and its exclusive possession and use from the effective date of the purchase contract until payment by the United States. The purchase price stipulated in the contract may be fairly regarded, at the very least, as the agreed equivalent of just compensation for the taking of the land by condemnation or by purchase. By their successful defense of the validity of the purchase contract, the landowners converted the condemnation proceedings from an ordinary adversary proceeding into one controlled, as to the amount of their recovery, by the terms of the purchase contract. They may not complain that the resulting award to them was, in the words of the contract on which they rely, "in accordance with all the terms and provisions of this option."

The fact that the United States did not proceed with condemnation proceedings as contemplated by the purchase contract, but under the mistaken belief that the contract was void, can not justify the award of interest not required by the contract. In the absence of a statute or an express contract providing for it, interest can not be added to an obligation of the United States. *United*

States v. *North Carolina*, 136 U.S. 211; *United States* v. *Rogers, supra*, p. 169; *Seaboard Air Line Ry. Co.* v. *United States, supra*, p. 304. The allowance of interest upon the consideration stipulated in the purchase contract would be tantamount to awarding interest against the United States by way of damages for delay in the payment of an obligation. "* * * interest does not run upon claims against the Government even though there has been a default in the payment of the principal." *Smyth* v. *United States*, 302 U.S. 329, 353.

We have not overlooked the decision in *United States* v. *Baugh*, 5 Cir., 149 F.2d 190. We think that case may be distinguished from this on the ground that the contract there involved was interpreted by the court as fixing only the fair value of the land for the purpose of a condemnation then proceeding. If, however, this distinction is not warranted, we are unable to follow the decision in the Baugh case.

The judgment of the District Court is affirmed.

[fol. 306] (Judgment in Cause No. 13,223.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Tuesday, April 9, 1946.

United States of America, Appellant,
No. 13,223. vs.
Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed without costs.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to enter judgment in favor of the appellees, Edgar S. Albrecht, Geraldine Albrecht, Albert W. Albrecht, Jr., and Virginia Albrecht, for the consideration stipulated in the contract between appellees and the United States without interest.

April 9, 1946.

[fol. 307] (Judgment in Cause No. 13,226.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Tuesday, April 9, 1946.

United States of America, Appellant,
No. 13,226. vs.
Q. W. S. S. Realty and Investment Company,
a corporation.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here Ordered and Adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed without costs.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to enter judgment in favor of the appellee, Q. W. S. S. Realty and Investment Company, a

corporation, for the consideration stipulated in the contract between appellees and the United States without interest.

April 9, 1946.

[fol. 308] (Judgment in Cause No. 13,227.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Tuesday, April 9, 1946.

United States of America, Appellant,
No. 13,227. vs.
Edward J. Linnenbringer and Emma Linnenbringer, wife of Edward J. Linnenbringer.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here Ordered and Adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed without costs.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to enter judgment in favor of the appellees, Edward J. Linnenbringer and Emma Linnenbringer, wife of Edward J. Linnenbringer, for the consideration stipulated in the contract between appellees and the United States without interest.

April 9, 1946.

[fol. 309] (Judgment in Cause No. 13,228.)

United States Circuit Court of Appeals

Eighth Circuit

March Term, 1946.

Tuesday, April 9, 1946.

United States of America, Appellant,
No. 13,228. vs.
Dennis B. Pitman and May Dell Pitman,
wife of Dennis B. Pitman.

Appeal from the District Court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here Ordered and Adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, reversed without costs.

And it is further Ordered by this Court that this cause be, and the same is hereby, remanded to the said District Court with directions to enter judgment in favor of the appellees, Dennis B. Pitman and May Dell Pitman, wife of Dennis B. Pitman, for the consideration stipulated in the contract between appellees and the United States without interest.

April 9, 1946.

IN THE

United States Circuit Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 13,223.

UNITED STATES OF AMERICA, Appellant,

vs.

EDGAR S. ALBRECHT et al., Appellees.

No. 13,226.

UNITED STATES OF AMERICA, Appellant,

vs.

Q. W. S. S. REALTY AND INVESTMENT COMPANY, Appellee.

No. 13,227.

UNITED STATES OF AMERICA, Appellant,

vs.

EDWARD J. LINNENBRINGER et al., Appellees.

No. 13,228.

UNITED STATES OF AMERICA, Appellant,

vs.

DENNIS B. PITMAN et al., Appellees.

Appeals from the District Courts of the United States for the Eastern District of Missouri, Eastern Division, Judges George H. Moore and R. M. Duncan, Presiding.

MOTION FOR REHEARING

Of Appellees Edgar S. Albrecht and Geraldine Albrecht, His Wife, and Albert W. Albrecht, Jr., and Virginia Albrecht, His Wife.

Now come the appellees Edgar S. Albrecht and Geraldine Albrecht, his wife, and Albert W. Albrecht, Jr., and Virginia Albrecht, his wife, within fifteen days after the date of the judgment entered by this Court on the 9th day of April, 1946, and move the Court to set aside its opinion, decision and judgment and to order a rehearing of the issues involved in this appeal, for the reason that the said

opinion of the Court inadvertently overlooked certain material matters of law and fact involved in this cause, in the following particulars, to wit:

I.

The Court, in its opinion, treats the case as if it were one for the specific performance of a contract and inadvertently overlooks the fact that this is a condemnation suit in which the Government obtained the title to the land in question under the provisions of 40 U. S. C. A., Section 258a, under the express terms of which it is bound to pay interest.

The unexpressed premise of the Court's opinion seems to be that this is a suit on a contract for specific performance, and since the Government cannot be held to pay interest in a suit on a contract unless the contract specifically calls for the payment of interest, therefore no interest is allowable. In so doing, the Court overlooks the fact that this is not a suit against the Government for the specific performance of any contract. The District Court would have no jurisdiction of such a suit under 28 U. S. C. A., Section 41 (20), where the Tucker Act limits the jurisdiction of the Federal District Courts in suits on contracts against the Government to controversies involving not more than $10,000. To repeat, this is not a suit for specific performance of a contract. If this Court believes it is, then it is forced to the conclusion that neither the District Court nor this Court has any jurisdiction of the cause.

This Court mentions the existence of 40 U. S. C. A., Section 258a, only once in its opinion, on page 4, where it comments that the statute recognizes the constitutional rights of the landowner. The truth of the matter is that the Government in this cause obtained all of its rights to the land in question solely under the provisions of this statute. The option contract did not purport to pass title.

The Government repudiated the option contract and did not receive title under any deed. It obtained title by its Declaration of Taking and the order and judgment on the Declaration of Taking, which stated "that the title to said land in fee simple absolute, vested in the United States of America upon the filing of said Declaration of Taking."

Since the Government did not obtain title under the option contract, and did obtain title only by virtue of the Declaration of Taking filed under 40 U. S. C. A., Section 258a, the Government's rights and duties in obtaining title are measured by that statute with one exception: The Supreme Court of the United States, in **Muschany v. United States**, 324 U. S. 49, 65 S. Ct. 442, held that in the condemnation suit the Government is bound by the contract insofar as the contract price establishes the fair value of the land. The Supreme Court did not hold that the relationship between the Government and the landowners rested solely on contract because, if so, the Government would not now have title to the land. That title it obtained only by virtue of the statute.

Having obtained the benefit of the statute, the Government is bound by the terms of the statute to the payment of interest. Phrased differently, the effect of **Muschany v. United States**, supra, is to ingraft upon the rights and duties of the parties under the statute the provisions of the contract so far as it sets the fair value of the land.

Considerable space in the opinion is taken up with an interpretation and construction of the contract, but in so doing no mention is made of the effect of the provisions of the statute which provide for interest. Really, the only room for interpretation of the contract is to start with the premise that since the Government obtained its rights under the statute which provides for interest, the contract must be examined solely with a view to determine whether or not the landowners expressly waived their rights to

interest under the statute. That approach to the interpretation of the contract is overlooked by the Court.

If the Court starts with the central fact in this suit that the rights of the Government in this condemnation suit spring solely from he statute, it cannot treat the matter as if it were specifically enforcing the contract against the Government and as if 40 U. S. C. A., Section 258a, were not pertinent. This is either a suit in condemnation in which the Government is bound by the statute under which it acted, unless the parties have expressly waived the provisions of the statute by contract, or it is an action for specific performance of a contract, in which case the United States District Court had no jurisdiction of the case at all.

II.

As we understand the opinion of the Court, its holding is fairly summarized as follows: The landowner is constitutionally guaranteed just compensation for his land, which is the fair value of the land when payment is contemporaneous with taking, but where payment is subsequent to taking, includes interest from the date of taking until payment. When the Government and the landowner enter into a contract in contemplation of condemnation, the contract must fall into one of two classes: (a) contracts between the Government and a landowner, made in contemplation of acquisition of land by condemnation "fixing the value of the land for that purpose", fall within the constitutional requirement for the payment of interest; or (b) contracts which "fix the net amount to be received by the landowner from the United States for the taking of the land either by purchase or by condemnation", as to which no interest need be paid. To determine whether interest is payable, the contract in question must be interpreted "in its entirety" and placed in

either category (a) or category (b). The determining factors in classifying a contract are said to be:

(1) If there is no provision for interest, the contract falls under classification (b);

(2) If the contract does not fix a definite time within which payment is required or contemplates delay in payment, the contract falls in category (b).

So far as this Court holds that a contract which covers only the fair value of the land is subject to the constitutional and statutory requirements for the payment of interest, but a contract in which the purchase price by agreement covers both the fair value of the land and the use of the land by the Government until payment therefor is not subject to the payment of interest by the Government because, by construction, the equivalent of that interest was originally included by the parties in the purchase price, we are in accord. We believe, however, that the tests applied by this Court in attempting to draw a line between the two classes of contracts mentioned are faulty and will not stand analysis.

The nature of the contract cannot be determined by the absence of a provision specifically calling for the payment of interest. Interest is guaranteed both under the Constitution and by statute. Thus, if a landowner should follow this Court's opinion, pages 4 and 5, and draw up a contract in contemplation of acquisition of land by condemnation "fixing the value of the land for that purpose", this Court says that as to such a contract "interest must be allowed the owner". Thus such a contract which did not in any way, shape or form mention interest would, however, be subject to the constitutional and statutory requirement that interest be paid. Yet, on page 6 of this Court's opinion, in interpreting the contract in this case, it relies upon the fact that "there is

no provision in the contract for the payment of interest on the stipulated consideration" in reaching the conclusion that this contract did not merely establish the fair value of the land. It is evident from the opinion, on pages 4 and 5, that a specific provision for interest is not necessary for a class (a) contract because interest follows by virtue of constitutional and statutory requirements. Yet on page 6 of the opinion the fact that there is no provision for interest seems to be determinative to the Court that the contract is a class (b) contract. (Evidently this confusion springs from the Court's unexpressed premise that it is dealing with a suit for the specific performance of a contract and that in such a suit interest cannot be allowed against the Government unless the contract specifically calls for it.)

The second test used by the Court in its opinion to determine the nature of the contract (Opinion, page 6) is whether or not the contract fixes a definite time within which payment is required or contemplates delay in payment. Again the Court has inadvertently used a faulty test.

Suppose that in accordance with the opinion of this Court, on pages 4 and 5, a contract should be drawn up between the Government and a landowner which did not provide for the giving of a deed but provided solely for the acquisition by the Government of the land by condemnation and provided that in such contemplated condemnation suit the parties, by agreement, fixed "the value of the land for that purpose" and that the agreed value of the land should be deposited by the Government with its petition in condemnation. Presume the circumstances at the time to be as they were in 1940, that the Government desired immediate possession by virtue of an emergency but did not have manpower or program sufficient to allow an immediate filing of the condemnation

suit, so it provided for immediate possession in the contract. Sometime later the Government files the condemnation suit under 40 U. S. C. A., Section 258a, but instead of depositing the agreed amount, deposits only a small fraction thereof, and after a lapse of some four years, the Government is forced by decision of the Supreme Court to pay the agreed amount. Would the Government then have to pay interest? This Court, in its opinion (p. 5), says:

> "Plainly, where after such a contract the United States acquires possession of the land in contemplated condemnation proceedings and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of taking until payment in order that the constitutional requirement of just compensation may be satisfied."

Yet, in such a case where the contract between the parties followed the exact wording of this Court's opinion, the agreemen would have failed to fix an exact date on which payment was to be made and delay in the payment would be clearly implied from the contract, so that despite the test of failure to fix an exact date and contemplated delay, this Court would, under its opinion on pages 4 and 5, be forced to allow interest. It would appear from the opinion itself that the lack of definite date and delay are not accurate tests.

Another illustration may exhibit the fallacy of this test. Suppose a contract to purchase land was entered into by the Government with the landowner. No mention is made at all of possible condemnation, but the contract merely sets out the purchase price and provides that upon the furnishing of a deed and certificate of title by the seller, the Government shall pay the agreed purchase price. It is hornbook law that the contract would not be found invalid, though no date for performance was specifically stated,

since any court would find that the contract was to be performed in a reasonable time. Suppose that after the contract was entered into, but before the termination of a reasonable time, the Government repudiated the contract and condemned the land under 40 U. S. C. A., Section 258a, and the Government deposited only a small fraction of the agreed purchase price. Under **Muschany v. United States**, supra, and **Danforth v. United States**, 308 U. S. 271, 60 S. Ct. 231, the contract would be binding in condemnation as to the fair value of the land. What about interest? The Government did not take title by the contract and no deed was given. The parties did not have interest in mind at all in the contract. Obviously the contract was intended to cover the fair value of the land. The tests used by this Court, on page 6 of its opinion, would indicate that no interest would be paid; but under the holding in this opinion, on pages 4 and 5, interest would have to be allowed. Why? The parties only agreed on one thing, namely, the fair value of the land. The right to interest would follow not from the contract but from the Constitution and condemnation statute. Yet no mention would have been made of interest and there would have been no specific date for payment and delay would have been contemplated. It is submitted that the tests used by this Court, on page 6 of its opinion, are wholly erroneous and contradictory to this Court's opinion on pages 4 and 5. (Again, the reason for the contradiction in the opinion evidently springs from this Court's failure to recognize the fact that the rights of the Government as to this land originated solely in condemnation by virtue of the statute. The right to interest did not originate in contract and the rules as to allowing interest in suits on a contract against the Government are not applicable. Where the Government obtains its rights by condemnation, it must pay interest unless the contract waives the right of the landowner to interest.)

But if it is necessary that the option contract in this case

fix a date by which payment should be made, the contract does fix such a date. The contract provided that upon furnishing a final certificate of title, the Government should pay the purchase price (Record, p. 37). Under elementary law the landowner would have only a reasonable time to furnish such a certificate of title. The contract also provides that if the title should not be approved by the Attorney General, the Government should file a condemnation suit and "upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court." Thus, the contract itself furnishes the date of payment with reasonable certainty in the absence of condemnation and specifically furnishes the date for payment in the event of condemnation, namely, the date that the Government filed its condemnation petition.

What other tests can be applied to this contract to determine whether it falls into class (a) or class (b)? Perhaps the wording of the contract so far as it relates to the consideration is as good a test as any to determine the intent of the parties as to whether they were dealing with an amount which represented the "value of the land" or the value of the land plus the use of the land by the Government until payment. The option contract refers to the consideration on six occasions in the following terms:

(1) "To sell and convey to the Government for the consideration of * * *"

(2) "Gross sales price."

(3) "The agreed purchase price."

(4) "The agreed purchase price."

(5) "Under a consent verdict fixing the award at the agreed valuation."

(6) "Said agreed purchase price."

It may be admitted that the phrase "agreed purchase price" is not completely determinative. It is obvious from the record, however, that that phrase was used in connec-

tion with the idea that the landowner was presently agreeing to sell his land for the consideration named, with the whole deal to be consummated in the near future in a reasonable time. Certainly the phrase cannot be twisted to mean that the parties contemplated that the Government would delay payment for a period of 4½ years and that the purchase price was intended to cover both the fair value of the land and the use of the land during that period. The truth of the matter is that when those phrases were used, the only thing the parties contemplated was an immediate sale and immediate payment of the purchase price, and that what they had in mind was the value of the land at that time, not just compensation in the sense of fair value of the land plus the use of it for 4½ years.

At the one point in the option contract where condemnation is contemplated, the contract provided that the Government could acquire the land by condemnation proceedings "under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will, upon filing its petition in said proceedings, deposit said agreed purchase price with the clerk of said court." Here the term "consent verdict" is used, the term "award" is used, and the term "agreed valuation" is used. All of these terms are synonymous only with the idea that the consideration there referred to represented the fair value of the land plus, at most, the use by the Government of the land, until it filed its petition in condemnation. The use of these terms must be construed in the light of the condemnation procedure where the verdict of the jury, after an appeal from commissioners, fixes the fair value of the land on the date of taking, and the Court, under the provisions of the statute, adds to the fair value of the land six per cent interest from the date of taking, the total sum being just compensation. This Court has inadvertently overlooked this provision of the contract in determining whether or not the parties in-

tended to contract only for the fair value of the land or for full and just compensation including fair value and the use of the land for 4½ years while the Government failed to pay.

For this Court to say, in its opinion, that by this contract the landowners intended to hand over the land to the Government and receive the purchase price from the Government at some indefinite time in the future, in this case almost 4½ years from the time the Government took possession, and that the parties intended by their contract that the purchase price covered the use by the Government of the land during all of that period and the retention by the Government of the money during that period where the contract specifically provided that payment should be made the moment the Government filed its petition in condemnation constitutes an inadvertent overlooking by the Court of the express terms of this contract. If the intent of the contracting parties is the true test rather than the ones mentioned by this Court (and having in mind that the landowner in no wise prepared this contract, and that a contract must be interpreted against the party drawing it), then it follows that the conclusion that it was the intent of the landowners in these cases to forego interest by this contract must be arrived at by some highly artificial tests having no relation to the actual state of mind of the parties as expressed in the contract.

III.

The Court has inadvertently overlooked the grounds for the decision in **United States v. Baugh**, 149 Fed. (2d) 190 (C. C. A. 5), in distinguishing that case.

In **United States v. Baugh**, supra, the Government and the landowners entered into a contract whereby the Court, in condemnation, was authorized to adjudge "just compensation for the lands taken, to be in the sum of * * *." The contract in no wise mentioned interest and did not set

any specific date for payment. The Court held (1) that under the Constitution a landowner is entitled to interest on the fair value of its property, and that a stipulation in regard to compensation which does not cover interest in no wise disturbs the constitutional right of the landowner to interest; (2) that the constitutional right to interest will not be presumed to have been waived merely by the failure to specifically provide for it in writing. It is interesting to note that the amount which the Government agreed to pay for the land was referred to as "just compensation for the lands taken," but nevertheless the Court held that the landowner was also entitled to interest on the amount fixed by the contract in order to satisfy the constitutional guaranty of just compensation.

For purposes of possible review of this Court's opinion, it is felt that it would be fair if this Court flatly stated that it refused to follow the ruling in the **Baugh** case, as it obviously does. The distinguishing of the **Baugh** case in this opinion, in view of the wording of the contract in that case, as compared with the wording of the contract in the present case, is really only a refusal to follow that decision, and such holding should be made explicit.

Respectfully submitted,

GEORGE EIGEL,
Attorney for Appellees Albert W. Albrecht, Jr., and Virginia Albrecht, His Wife.

HOE, CARROLL, KEEFE & COBURN,
RICHMOND C. COBURN and
THOMAS L. CROFT,
Attorneys for Appellees Edgar S. Albrecht and Geraldine Albrecht, His Wife.

Richmond C. Coburn, one of the attorneys for appellees Edgar S. Albrecht and Geraldine Albrecht, his wife, and Albert W. Albrecht, Jr., and Virginia Albrecht, his wife, hereby certifies that the foregoing Motion for Rehearing is filed for the sole purpose of calling the Court's attention to material matters of law or fact inadvertently overlooked by the Court in its opinion, as is shown by its opinion and the foregoing Motion for Rehearing, and that said Motion is not made for the purpose of delay, but is filed in good faith and is believed to be meritorious.

Richmond C. Coburn,
Attorney for Appellees.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 23, 1946.

[fol. 323] (Order denying Motion of Appellees for Rehearing in Cause No. 13,223.)

March Term, 1946.

Tuesday, April 30, 1946.

Motion for rehearing filed by appellees in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

April 30, 1946.

IN THE

United States Circuit Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 13,226.
Civil.

UNITED STATES OF AMERICA,
Appellant,

vs.

Q. W. S. S. REALTY AND INVESTMENT COMPANY,
Appellee.

Appeal from the District Court of the United States for the Eastern District of Missouri.

PETITION OF Q. W. S. S. REALTY AND INVESTMENT COMPANY FOR A REHEARING.

Comes now Q. W. S. S. Realty and Investment Company, a corporation, within fifteen days after the filing of the opinion and decision of the Court in this cause, which opinion and decision recites that it is in accordance with the opinion and decision in the Oliver Case, being No. 13,174, and respectfully moves and petitions the Court to grant it a rehearing of said cause for the following reasons, to-wit:

I.

The Court, after commenting that contracts between the Government and a landowner made in contemplation

of acquisition of land by condemnation and fixing the value of the land for that purpose are valid, comments further that: "Plainly, where after such a contract the United States acquired possession of the land in the contemplated condemnation proceeding and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of the taking until the payment in order that the constitutional requirement of just compensation may be satisfied." The Court then comments that where the Government acquiring agency is authorized to acquire land by purchase, contracts made with landowners may validly fix the net amount to be received for the taking of the land either by purchase or by condemnation and that the parties in such a contract may bind themselves to a consideration either more or less than just compensation in the constitutional sense. The Court then holds in substance that, the United States having by the terms of the contract acquired possession and use of the land until title should vest by reason of payment therefor, the effect of the contract was to bind the landowner to the consideration named and no more as compensation for delayed payment. In support of this holding the Court at a later point in the opinion states that: "Delay in the payment of the agreed compensation for the time necessary to clear title by condemnation or otherwise is clearly implied." We submit that in reaching the conclusion that under the facts of this condemnation case the landowner is bound to accept and is entitled to compensation in the amount of the consideration named in the contract and nothing additional as compensation for delayed payment, the Court overlooked the fact that condemnation was contemplated by the contract in the case at bar if the Government should choose to use that process, and the further fact that even though the Government obtained possession under the contract and retained possession thereafter un-

til it acquired title by the Declaration of Taking, it nevertheless, while retaining said possession, lost the right to possession and became an unlawful holder thereof immediately upon its repudiation of the contract and again acquired the **right of possession only by virtue of a condemnation proceeding.** We submit that these facts so overlooked by the Court bring this case within the state of facts stated by the Court to be a state of facts which makes the payment of interest necessary in order to accomplish just compensation as contemplated by the fifth amendment, the Court having said as above quoted in substance that where after entrance by the Government into a contract made in contemplation of the acquisition of land by condemnation the United States acquires possession in the condemnation proceeding and fails to make payment of the agreed value contemporaneously with the taking, interest must be allowed the owner from the date of the taking until payment.

II.

The Court in reaching the conclusion described in our paragraph I completely overlooked the fact that while: "Delay in the payment of the agreed compensation for the time necessary to clear title by condemnation or otherwise is clearly implied" from the contract, nevertheless, such inference or implication from the contract is limited to such delay only as is occasioned by the good faith performance of those things provided for by the contract and cannot possibly be extended to cover such delay as is occasioned by a repudiation of the contract itself and by a condemnation suit brought for the purpose of acquiring the land by a process and for a consideration in entire contravention of the contract. That the parties to the contract sought to avoid delay in payment pending the clearing of title by condemnation is clearly demonstrated by the fact that the contract itself provides for

the payment of the agreed valuation into Court at the time of the filing of such a condemnation suit. This contract does not provide for protracted delay for the purpose of accomplishing its own nullification.

III.

The Court says in its opinion: "The purchase price stipulated in the contract is not merely the agreed fair value of the land made in contemplation of its acquisition by the United States through condemnation but the agreed consideration to be paid the landowners by the United States for both the land and its exclusive possession and use from the effective date of the purchase contract until payment by the United States." We submit that the Court in reaching this conclusion overlooked the fact the contract describes the consideration named therein as the agreed **valuation** (R. 93) and that the contracting parties provided against delay by providing that the agreed valuation should be paid into Court at the beginning of the condemnation proceeding and naturally did not contemplate that there would be substantial delay unless condemnation to perfect title became necessary and that in view of these assurances against delay the landowner was willing to grant possession without any promise of additional consideration over and above the value of the land, but that when delay occasioned by refusal on the Government's part to adhere to the contract provisions against delay occurred the landowner under the just compensation provision of the fifth amendment became entitled to compensation for such delay in addition to the agreed valuation.

IV.

The Court says in its opinion that by reason of the Government's repudiation of the contract the landowner was at liberty to accept the repudiation and recover interest

on the amount awarded in excess of the amount paid into Court. We submit that if this is true it means that the repudiation of the contract had the effect of releasing the landowner from the contract obligation to forego compensation for delayed payment while at the same time he had the right to insist that the agreed valuation in the valid contract be the amount awarded as compensation for the land as of the date of the taking.

V.

The Court says in its opinion: "The landowners are not entitled to insist upon provisions of the contract favorable to them while rejecting others which are unfavorable." We submit that in so saying the Court apparently overlooked the fact that the so-called **unfavorable** provision to the landowner being the provision entitling the Government to immediate possession was linked with and compensated for by the **favorable** provision being for payment of the agreed valuation at the time of instituting the suit, and that that valuation not having been paid as and when provided and the failure to so pay it having been due to deliberate repudiation, the contract right to possession was forever forfeited by the Government because by the lapse of time it had become impossible for the Government to pay the agreed valuation as and when provided, whereas it was still possible for the award in condemnation to be fixed at the contract price and the landowner had the right to insist upon it, the Government itself having forfeited its contract right of possession and the landowner having thereby become entitled to compensation for being deprived of both the use of the land and the use of its equivalent in money for the time between the taking and payment.

VI.

The Court apparently overlooked the fact that this is essentially a condemnation proceeding and not one for performance of the contract. The Supreme Court in the Muschany and Andrews cases said:

> "Judgments were entered upon a Declaration of Taking which vested title in the United States."

In the case at bar the contract valuation is $52,000.00, which is far in excess of the jurisdictional amount in suits for specific performance in the United States District Court. (See 28 U. S. C. A., Sec. 41, Paragraph 20; also see Hammond Nolton v. United States, 121 Fed. [2d] 192, l. c. 202, 314 U. S. 694.) Under those circumstances the District Court would not have had jurisdiction to grant a decree of performance of the contract.

Conclusions.

Wherefore, Appellee respectfully prays that a rehearing of this cause be granted and that upon such rehearing an affirmance of the judgment be accorded.

Respectfully submitted,

SAMUEL M. WATSON,
Attorney for Appellee, Q. W. S. S. Realty and Investment Company.

Certificate of Counsel.

Samuel M. Watson, attorney for the above named appellee, hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay.

Samuel M. Watson.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 24, 1946.

[fol. 330] (Order denying Petition of Appellee for Rehearing in Cause No. 13,226.)

March Term, 1946.

Tuesday, April 30, 1946.

Petition for rehearing filed by appellee in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

April 30, 1946.

IN THE

United States Circuit Court of Appeals

FOR THE EIGHTH CIRCUIT.

No. 13,223.

UNITED STATES OF AMERICA, Appellant,

vs.

EDGAR S. ALBRECHT et al., Appellees.

No. 13,226.

UNITED STATES OF AMERICA, Appellant,

vs.

Q. W. S. S. REALTY AND INVESTMENT COMPANY, Appellee.

No. 13,227.

UNITED STATES OF AMERICA, Appellant,

vs.

EDWARD J. LINNENBRINGER et al., Appellees.

No. 13,228.

UNITED STATES OF AMERICA, Appellant,

vs.

DENNIS B. PITMAN et al., Appellees.

Appeals from the District Courts of the United States for the Eastern District of Missouri, Eastern Division, Judges George H. Moore and R. M. Duncan, Presiding.

PETITION FOR REHEARING FOR APPELLEE EDWARD J. LINNENBRINGER.

To the Court of Appeals for the Eighth Circuit and the Judges thereof:

Comes now Edward J. Linnenbringer, the appellee in the above entitled cause, and presents this, his petition for a rehearing of the above entitled cause, and in support thereof respectfully shows:

I.

The Court erred in holding that: "By their unsuccessful defense of the validity of the purchase contract, the

landowners converted the condemnation proceedings from an ordinary adversary proceeding into one controlled, as to the amount of their recovery, by the terms of the purchase contract" for the reason that this holding overlooks the nature of this proceeding and the various acts performed by the appellant in this proceeding. The United States instituted this proceeding pursuant to the Declaration of Taking Act, 40 U. S. C. A. 258a-258c. At all times, the United States conducted the proceeding as one pursuant to the Declaration of Taking Act. A Declaration of Taking was filed and $16,000.00 was deposited in the District Court under the Declaration of Taking. It was the United States, and not the appellee, who filed the "Motion For Judgment For Plaintiff In Condemnation And For Defendant Fixing Compensation By Option" (R. 154).

It should be noticed that pursuant to its "Motion For Judgment" in which it sought to fix the compensation at the option price, the United States, on May 17, 1945, deposited an amount of $18,000 in the registry of the District Court in addition to the $16,000 it had theretofore deposited. This $18,000 was deposited by the United States on its own motion and initiative before the District Court entered judgment (opinion filed June 8, 1945). The significance of this voluntary action by the United States cannot be overlooked. It entirely precludes any contention that it was the landowner who "converted" the action from one in condemnation to one on a contract. It was the United States, not the appellee, which was insisting that the option price determined the "compensation." There was no election by the landowner, who at all times took the position that this was a condemnation proceeding which under the facts of withholding the price after acquisition of possession required the payment of interest in order to render just compensation. As a matter of fact, after the United States' motion and deposit of the total of $34,000 in the registry of the Court, there was, as

far as the option was concerned, nothing for the landowner to elect. The agreed valuation of the land (which was fixed by the option and which is to be distinguished from just compensation) was deposited by the United States, and after that, there was certainly nothing the landowner could do, or did do, that in any way affected the nature of the proceeding. The United States simply and properly recognized that in this condemnation proceeding which it instituted that it was bound by the agreed price or valuation of the land. This was not even a situation where the United States refused to recognize that it was bound by the option price as to the value of the land at the time of taking and forced the landowner to prove such value. Here the Government in this condemnation proceeding by its own act and initiative settled this phase of the question. No act of the appellee in any way converted or could convert the proceeding to one other than a proceeding under the Declaration of Taking Act. All that the appellee demanded was that interest be paid as required by law from the date of taking possession.

II.

The Court erred in reversing the judgment of the District Court in the above entitled cause and in affirming the judgment of the District Court in Oliver v. United States (No. 13,154), decided the same day, for the reason that if as this Court held (which holding, however, is assigned as error by appellee herein under Ground I) the defense of this appellee converted this cause from a condemnation proceeding to an action on a contract or obligation, then neither the District Court in the instant cause nor the District Court in Oliver v. United States (No. 13,154) had any jurisdiction. The Tucker Act, 28 U. S. C. A., Sec. 41 (20), grants District Courts jurisdiction of claims against the United States based upon contract only

when the claims involved do not exceed $10,000. That Act provides:

> "Sec. 41. The district courts shall have original jurisdiction as follows:
>
> • • • • • • •
>
> "(20) Suits against United States concurrent with the court of claims, of all claims not exceeding $10,000 founded upon the constitution of the United States or any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity or admiralty, if the United States were suable. • • •"

The requirement as to amount is jurisdictional and one upon which the courts, of their own motion, must insist. Hammond-Knowlton v. United States, 121 F. (2d) 192, 202, cert. denied 314 U. S. 694, 62 S. Ct. 410, 86 L. Ed. 555. Inasmuch as the price of the land (not just compensation) fixed by the option for the land in the instant cause is $34,000 and in Oliver v. United States is $70,000, the District Court would not have jurisdiction to consider suits to enforce these contracts. On the other hand, a condemnation proceeding by the United States pursuant to the Declaration of Taking Act and other condemnation statutes is not a suit founded upon a claim against the United States. An integral part and a necessary step in such condemnation proceeding is the determination of the value of the land and of the just compensation due the landowner. Irrespective of whether the just compensation exceeds $10,000, the District Court has jurisdiction. By recognizing that the District Court below in the instant case and in Oliver v. United States (No. 13,154) did have jurisdiction this Court properly recognized that these proceed-

ings were definitely proceedings pursuant to the Declaration of Taking Act. The District Court having jurisdiction and the proceedings being condemnation proceedings pursuant to the Declaration of Taking Act, the District Court properly allowed this appellee interest as required by the Declaration of Taking Act. This Court erroneously held that appellee converted the action to one on contract, and this holding is in conflict with this Court's recognizing that the District Court had jurisdiction.

III.

The Court erred in distinguishing United States v. Baugh, 149 F. (2d) 190, "on the ground that the contract there involved was interpreted by the court as fixing only the fair value of the land for the purpose of a condemnation then proceeding." This attempted distinction overlooks material matters of fact and law. It should be noted that the stipulation involved in United States v. Baugh, supra, specifically designated the agreed sum as "just compensation." It provided that the court be authorized to enter final judgment "adjudging just compensation for the lands taken, to be in the sum of * * *." The option in the instant case did not fix, or endeavor to fix, just compensation. At all times, the option fixed only the "purchase price" or "agreed valuation" of the land. The option here involved provided that the government agreed that the "purchase price" of $34,000.00 would be paid by it to the landowners upon the furnishing of a certificate of title. The option further provided:

> "If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valua-

tion * * * and will upon filing its petition in such proceedings deposit said agreed purchase price * * *."

This Court's attempted distinction of United States v. Baugh, 149 F. (2d) 190, becomes meaningless when the express langnuage of the option here involved, referring to the amount as the "agreed valuation" and agreed "purchase price," is read and compared with the language used in the stipulation in United States v. Baugh, 149 F. (2d) 190, which refers to the amount there as "just compensation." There is a direct conflict between the decision of this Court and the decision of the Circuit Court of Appeals for the Fifth Circuit.

IV.

The opinion of this Court renders an interpretation of the decision and opinion of Muschany v. United States, 324 U. S. 49, which is in conflict with the decision and opinion of the Supreme Court of the United States in that case. This court properly held that Muschany v. United States established the validity of the contract so far as the purchase price or value of the land is concerned. From this, however, the court concluded that the landowners by insisting on the validity of the agreed valuation or purchase price were precluded from demanding interest because the contract made no provision for interest but fixed a price which was the "equivalent of just compensation" aside from ignoring the fact that the option did not fix "just compensation," but only fixed the price or valuation of the land, this conclusion also ignores what actually happened in Muschany v. United States. There is nothing in Muschany v. United States which precludes the payment of interest. Indeed, the District Court in Muschany v. United States in the judgment under review by the Supreme Court provided for the payment of interest. The Supreme Court of the United States in reversing the

Circuit Court of Appeals gave the effect of reinstating the judgment of the District Court requiring the payment of interest. Thus the actual effect of Muschany v. United States is that interest is properly allowed in such an instance as here presented.

V.

The Court erred in holding: "The allowance of interest upon the condemnation stipulated in the purchase contract would be tantamount to awarding interest against the United States by way of damages for delay in the payment of an obligation. * * * 'interest does not run upon claims against the Government even though there has been a default in the payment of the principal.' Smyth v. United States, 302 U. S. 329, 353." In Smyth v. United States the Supreme Court of the United States was not concerned with a factual relation at all comparable with the facts here presented. This Court even recognizes that the facts here involved do not actually present a situation where interest would constitute damages for delay in the payment of an obligation because by the use of the word "tantamount" this Court clearly shows a recognition that the present situation is not allowing damages for delay in payment of an obligation (Smyth v. United States, 302 U. S. 329), because it was not concerned with a condemnation proceeding, does not control the interest situation. In addition that case specifically recognized that because of constitutional requirements condemnation proceedings allowed interest. Moreover, the reliance on the inapplicable Smyth v. United States, 302 U. S. 329, ignores the repeated distinctions drawn by the Supreme Court between condemnation proceedings and other types of proceedings. Thus in United States v. North American Transp. & Trading Co., 253 U. S. 330 (cited and relied upon in Smyth v. United States, 302 U. S. 329) a landowner brought a suit on an implied contract in the court

of claims and sought interest. The Supreme Court in holding that interest was not allowable pointed out (l. c. 337) that interest could be collected "as a part of just compensation in condemnation proceedings brought by the government. For such a proceeding * * * is not a suit by the landowner to collect a claim against the United States, but an adversary proceeding in which the owner is the defendant, and which the government institutes in order to secure title to land." The Supreme Court has repeatedly pointed out that United States v. North American Transp. & Trading Co. was not a condemnation proceeding and that while interest was not allowable there, it is allowable in condemnation proceedings. Thus in Jacobs v. United States, 290 U. S. 13, the Court in allowing interest said (l. c. 18):

> "The case of United States v. North American Transp. & Trading Co., 253 U. S. 330, 64 L. ed. 935, 40 S. Ct. 518, supra, cannot be regarded as establishing a different rule for the instant case. See Seaboard Air Line R. Co. v. United States, supra (261 U. S., p. 305, 676 L. ed. 669, 43 S. Ct. 354); Phelps v. United States, supra (274 U. S., pp. 343, 344, 71 L. ed. 1084, 1085, 47 S. Ct. 611). The North American Transp. & Trading Co. case rested upon its special facts. * * * The court said that the suit was not founded upon the Fifth Amendment. 253 U. S., pp. 334, 335. Suits brought to enforce the constitutional right to just compensation are governed by the later decisions which are directly in point."

The court in the instant case has inadvertenly overlooked this distinction between a suit brought by the United States (which is the situation here involved) and the situation presented in Smyth v. United States, supra, and United States v. North American Transp. & Trading Co., supra, with the result that the decision and opinion by this Court is in conflict with numerous decisions of the Supreme Court.

VI.

The Court erred in that its opinion and decision inadvertently overlooks the law of estoppel. In the instant case the landowner in reliance on an agreed purchase price and valuation of the land and on a performance of the option in accordance with its terms, changed his position to his detriment by relinquishing possession of the land to the government. After the government got possession of the land it repudiated the contract in such a way that the contract could never be fully performed. The defense of the landowner to the condemnation proceeding instituted by the United States was purely one that the purchase price and valuation had been fixed by the option and that the United States was estopped to deny the amount as the value of the land at the time possession was obtained. Cases setting forth the law of estoppel were cited by appellee at page 16 of his brief. Inasmuch as the option fixed the value as of the time the United States took possession and since the United States did not deposit the full amount of the value in the registry of the court, the appellee pursuant to the requirements of the Declaration of Taking Act is entitled to interest on $18,000 at the rate of 6% from June 18, 1941 to May 17, 1945.

Wherefore, upon the foregoing grounds, it is respectfully argued that this petition for a rehearing be granted and that the judgment of the District Court be upon further consideration affirmed.

Respectfully submitted,

WM. WAYE, JR.,
ROSCOE ANDERSON,
WM. R. GILBERT,
Attorneys for Appellee, Edward J. Linnenbringer.

Certificate of Counsel.

We, counsel for the above named appellee, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

Wm. Waye, Jr.,

Roscoe Anderson,

Wm. R. Gilbert,
Counsel for Appellee, Edward J. Linnenbringer.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 24, 1946.

[fol. 341] (Order denying Petition of Appellee Edward J. Linnenbringer for Rehearing in Cause No. 13,227.)

March Term, 1946.

Tuesday, April 30, 1946.

Petition for rehearing filed by appellee Edward J. Linnenbringer in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

April 30, 1946.

IN THE

United States Circuit Court of Appeals,

EIGHTH CIRCUIT.

UNITED STATES OF AMERICA,
Appellant,
vs.
DENNIS B. PITMAN and MAY DELL PITMAN,
Appellees.
No. 13,228.

Appeal from the District Court of the United States for the Eastern District of Missouri, Eastern Division, Hon. George H. Moore, Judge.

APPELLEES' PETITION FOR A REHEARING.

Come now Dennis B. Pitman and May Dell Pitman, appellees in the above entitled cause, and file this, their petition for a rehearing of said cause, and pray that the Court grant them a rehearing of said cause, and as grounds for their said petition state that on May 8, 1946, in a memorandum opinion filed, the Court reversed the judgment of the District Court in this cause for the reasons stated by the Court in its opinion filed on that day in the cause of Lola Castlio Oliver and A. Ray Oliver, her husband, Mrs.

B. I. Castlio (also known as B. Irene Castlio), appellants, v. United States of America, appellee, No. 13,174 (hereinafter referred to as the Oliver case); and that in its opinion in said Oliver case, wherein the Court has, in effect, decided the instant case, the Court has inadvertently overlooked material matters of law and fact, and its decision is contrary to controlling decisions of the Supreme Court of the United States, as follows:

(1) In holding in its opinion in the Oliver case that the landowners are not entitled to interest because the original contract between them and the United States does not contain a provision for the payment of interest nor fix the time for the payment of the "stipulated consideration," the Court has inadvertently overlooked the following, namely, that when the United States instituted the condemnation proceeding the contract, if valid, operated merely to fix the amount of the award in said proceeding, **thereby performing the same function that would otherwise have been performed by commissioners or a jury**; and that when the Supreme Court sustained the validity of the contract (Muschany et al. v. United States, 324 U. S. 49, 65 S. Ct. 442), the valuation agreed upon in the contract became the "amount finally awarded as the value of the property as of the date of the taking," within the purview of the Declaration of Taking Statute, 40 U. S. C. A., Sec. 258a, by the express terms whereof the landowners are entitled to interest on so much of such final award as was not paid into court at the time of the filing of said Declaration of Taking.

(2) In holding in its opinion in the Oliver case that the landowners are not entitled to interest on so much of the amount finally awarded in the condemnation proceeding as was not paid into the registry of the court at the time of the filing of the Declaration of Taking, the Court has in-

advertently overlooked the legal effect of the filing of the Declaration of Taking and the entry of judgment thereon, vesting absolute title in the United States; that thereby there was a taking of the landowners' property within the meaning of the Fifth Amendment and the statute as well (40 U. S. C. A., Sec. 258a); and that "given such a taking, the right to interest or a fair equivalent attaches itself automatically to the right to an award of damages" (Shoshone Tribe of Indians v. United States, 299 U. S. 476; Jacobs v. United States, 290 U. S. 13. Appellees respectfully submit that the Court's said opinion is in direct conflict with these decisions of the Supreme Court.

(3) In holding in its opinion in the Oliver case that the landowners are not entitled to interest because "by their successful defense of the validity of the purchase contract the landowners converted the condemnation proceeding from an ordinary adverse proceeding into one controlled, as to the amount of their recovery, by the terms of the purchase contract," the Court has inadvertently overlooked the fact that the Supreme Court of the United States in Muschany et al. v. United States, 324 U. S. 49, l. c. 51, 65 S. Ct. 442, l. c. 444, has definitely recognized that the pleading by the landowners of the contracts in these cases wrought no change in the condemnation proceedings, but that such contracts were relied upon merely as fixing the amount of the respective awards in such proceedings at the agreed valuation. The Supreme Court (324 U. S., l. c. 51) said: **"The contracts were pleaded by petitioners as defendants in eminent domain suits to establish the proper condemnation award."**

(4) In holding in its opinion in the Oliver case that the landowners are not entitled to interest for the reason that, "in the absence of a statute or express contract providing for it, interest cannot be added to an obligation of the

United States," the Court has inadvertently overlooked the nature of the landowners' claim for interest which, while consistent with the contract, is not founded upon the contract, but upon a statute expressly providing for the payment of interest, namely, the Declaration of Taking Statute, 40 U. S. C. A., Sec. 258a.

(5) In holding in its opinion in the Oliver case that the landowners are not entitled to interest the Court has inadvertently overlooked the fact that when the Government, in attempted repudiation of the contract resorted to condemnation, invoking the Declaration of Taking Statute (40 U. S. C. A., Sec. 258a), such proceeding—except for the fixing of the award therein at the agreed valuation—differed in no respect from the ordinary condemnation proceeding; that the landowners as well as the Government were entitled to all the benefits flowing from the statute; and that the Government, having invoked the statute and accepted its benefits, is estopped to deny its obligation to pay interest as required thereby.

(6) And in ruling in the Oliver case that the landowners were not entitled to interest on the ground that by insisting upon the validity of the contract they, in effect, converted the condemnation suit into one for the recovery by them on a contract obligation of the United States, and in making that the basis of its decision in the instant case, the Court has inadvertently overlooked the fact that since the amount involved in each of said cases exceeded $10,000.00, the District Court would have had no jurisdiction of a suit by the landowners on the contract. The District Court has only such jurisdiction of claims against the United States as is conferred by the Tucker Act, 28 U. S. C. A., Sec. 41, Subd. 20, by the express terms whereof that court has no jurisdiction of a suit against the United States on a contract where the amount involved exceeds the sum

of $10,000.00. Hammond-Knowlton v. United States, 121 Fed. (2) 192, certiorari denied 314 U. S. 694.

Wherefore, appellees pray that the Court grant them a rehearing of this cause.

Respectfully submitted,

WM. H. ALLEN,
Counsel for Appellees.

Certificate of Counsel.

Wm. H. Allen, counsel of record for appellees in the above entitled cause, hereby certifies that the above and foregoing petition of appellees for a rehearing of said cause is filed in good faith and is believed by him to be meritorious.

Wm. H. Allen,
Counsel for Appellees.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 22, 1946.

[fol. 347] (Order denying Petition of Appellees for Rehearing in Cause No. 13,228.)

March Term, 1946.

Tuesday, April 30, 1946.

Petition for rehearing filed by appellees in this cause having been considered by this Court, It is now here Ordered that the same be, and it is hereby, denied.

April 30, 1946.

[fol. 348] (Motion of Appellees to Stay Issuance of Mandate in Cause No. 13,223.)

Comes now the appellees in the above entitled cause, Edgar S. Albrecht and Geraldine Albrecht, his wife, and Albert W. Albrecht, Jr., and Virginia Albrecht, his wife, and move the Court to stay the issuance of its mandate herein for thirty days from April 30, 1946, the date of the denial herein of appellees' petition for rehearing, and thereafter until final disposition of said cause by the Supreme Court of the United States, provided that within such stay, there is filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the petition for certiorari, record, and brief have been filed, as provided by Rule 16 of this Court.

And in support of this motion the said appellees state that they will in good faith file in the Supreme Court of the United States a petition for writ of certiorari to review the judgment of April 9, 1946, reversing the judgment of the District Court, and the order and judgment of April 30, 1946, over-ruling and denying appellees' petition for a rehearing in this cause.

Wherefore, appellees respectfully pray that the issuance of the mandate of this Court be stayed and with-held for thirty days and that if within such stay there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court that the petition for certiorari, record, and

brief have been filed, such stay shall continue until final disposition by the Supreme Court.

GEORGE EIGEL,
722 Chestnut Street,
St. Louis 1, Missouri,
Attorneys for Appellees Albert W. Albrecht, Jr., and Virginia Albrecht, his wife.

[fol. 349]

RICHMOND C. COBURN,
IGOE, CARROLL, KEEFE AND COBURN,
1530 Boatmen's Bank Building,
St. Louis 2, Mo.
Attorneys for Appellees Edgar S. Albrecht and Geraldine Albrecht, his wife.

Receipt of service of the above petition to stay the mandate, and of a copy of said petition, is hereby acknowledged this 8th day of May, 1946.

C. J. HUGHES,
Spec. Asst. United States Attorney, St. Louis, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1946.

(Order Staying Issuance of Mandate in Cause No. 13,223.)

May Term, 1946.

Friday, May 10, 1946.

On Consideration of the motion of the appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Su-

preme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 10, 1946.

[fol. 350] (Petition of Appellee for Stay of Issuance of Mandate in Cause No. 13,226.)

Comes now the appellee in the above entitled cause and respectfully shows unto the Court:

That on April 9, 1946, this Court entered and recorded its decision reversing the decree of the District Court therein; and

That thereafter, the appellee herein filed its petition for rehearing; and

That thereafter, on the 30th day of April, 1946, this Court overruled said petition for rehearing; and

That appellee is [agrieved] in the premises and is desirous of a review by the United States Supreme Court of the decision of this Court.

Wherefore, appellee respectfully prays the Court to stay the Mandate in this cause for thirty (30) days to enable appellee to apply in accordance with the statutes of the United States and the rules of this Court and the Supreme Court of the United States in such cases made and provided to the Supreme Court for a writ of certiorari to review the decision of this Court in this cause.

Respectfully submitted,

SAMUEL M. WATSON,
Attorney for Appellee.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1946.

[fol. 351] (Order Staying Issuance of Mandate in Cause No. 13,226.)

May Term, 1946.

Friday, May 10, 1946.

On Consideration of the motion of the appellee for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 10, 1946.

[fol. 352] (Motion of Appellee Edward J. Linnenbringer for Stay of Issuance of Mandate in Cause No. 13,227.)

Comes now Edward J. Linnenbringer, the appellee in the above entitled cause, and moves this Court to stay its mandate for the reason that this appellee is desirous of filing in the Supreme Court of the United States a petition for a writ of certiorari to review the judgment of April 9, 1946 and order of April 30, 1946 denying a petition for rehearing of this Court in the above matter.

Wherefore, appellee prays that the mandate of this Court be stayed and withheld for thirty days and that if within such stay there is filed with this Court a certificate of the Clerk of the Supreme Court that the petition for

certiorari, record and brief have been filed such stay shall continue until final disposition by the Supreme Court.

WM. WAYE, JR.,
First National Bank Building,
St. Charles, Missouri,

W. R. GILBERT,
ROSCOE ANDERSON,
705 Olive Street,
St. Louis 1, Mo.
Attorneys for Appellee.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1946.

[fol. 353] (Order Staying Issuance of Mandate in Cause No. 13,227.)

May Term, 1946.

Friday, May 10, 1946.

On Consideration of the motion of the appellee, Edward J. Linnenbringer, for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here Ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 10, 1946.

[fol. 354] (Motion of Appellees for Stay of Issuance of Mandate in Cause No. 13,228.)

Come now Dennis B. Pitman and May Dell Pitman, appellees in the above entitled cause and state that they desire to apply to the Supreme Court of the United States for a writ of certiorari to review the decision of the Court in said cause, as shown by the Court's opinion rendered

herein on April 9, 1946, and move and pray that an order be made staying and withholding the mandate of this Court in said cause pending appellees' said application for said writ, in accordance with the Rules of this Court in such cases made and provided.

Respectfully submitted,

WM. H. ALLEN,
Counsel for Appellees.

Service of copy of within motion is acknowledged this 8th day of May, 1946.

C. J. HUGHES,
Spec. Asst. U. S. Atty.
Counsel for Appellant.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 8, 1946.

[fol. 355] (Order Staying Issuance of Mandate in Cause No. 13,228.)

May Term, 1946.

Friday, May 10, 1946.

On Consideration of the motion of the appellees for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

May 10, 1946.

[fol. 356] (Clerk's Certificate.)

United States Circuit Court of Appeals

Eighth Circuit

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcripts of the records from the District Court of the United States for the Eastern District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein the United States of America was Appellant and Edgar S. Albrecht, et al., were Appellees, No. 13,223, the United States of America was appellant and Q. W. S. S. Realty and Investment Company, a Corporation, was Appellee, No. 13,226, the United States of America was Appellant and Edward J. Linnenbringer, et al., were Appellees, No. 13,227, and the United States of America was Appellant and Dennis B. Pitman, et al., were Appellees, No. 13,228, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 20th day of May, A. D. 1946,

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Seal)

[fol. 356] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 148

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 357] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 149

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 358] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 150

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 359] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 155

ORDER ALLOWING CERTIORARI—Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.